

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

CITY OF DETROIT, MICHIGAN,

Debtor.

)
) Chapter 9
)
) Case No. 13-53846
)
) Hon. Steven W. Rhodes
)

**MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, AFL-CIO, AND SUB-CHAPTER 98, CITY OF
DETROIT RETIREES' MOTION TO COMPEL TESTIMONY OF KEVYN ORR AND
ALL OTHER CITY AND STATE WITNESSES REGARDING CITY-STATE
COMMUNICATIONS PRIOR TO JULY 17, 2013**

The Michigan Council 25 of the American Federation of State, County and Municipal Employees, AFL-CIO, and Sub-Chapter 98, City of Detroit Retirees (the AFSCME retiree chapter for City of Detroit retirees) (collectively, "AFSCME"), pursuant to Fed. R. Civ. P. ("Rule" or "Rules"), hereby move that this Court enter an order, in the form attached hereto as **Exhibit 1**, requiring Emergency Manager Kevyn Orr (the "EM" or "Orr"), and any and all future witnesses within the control of the City of Detroit (the "City" or "Debtor") or State of Michigan (the "State"), to appear and give testimony at depositions regarding all relevant communications between City and State officials prior to July 17, 2013.

BACKGROUND

Relevant Pre-Petition Facts.

1. At least as of January 31, 2013, staff members for Michigan Governor Richard D. Snyder (the "Governor") discussed with Orr – who was at the time a bankruptcy lawyer in private practice – the potential appointment of Orr as EM for the city of Detroit and a chapter 9 filing. See AFSCME's Objection to Eligibility, Docket No. 438, ¶¶ 23-27.

2. The Governor appointed Orr as EM for the City on March 14, 2013, effective as of March 25, 2013. On March 28, 2013, upon the purported effectiveness of PA 436, Orr became, and continues to act as, EM for the City under PA 436.

3. On June 14, 2013, Orr issued a “Proposal for Creditors” which expressly stated that “there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons.” The same day, Orr publicly threatened, in an interview with the Detroit Free Press Editorial Board, that vested pension benefits would not be protected in a chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state laws protecting vested pension benefits would “not . . . protect” retirees in bankruptcy court. *See* Docket No. 438, ¶ 12.

4. On July 3, 2013, against the backdrop of the threatening statements made by Orr regarding Michigan state law and protected pension benefits, plaintiffs (the “Webster Plaintiffs”) Gracie Webster (a City retiree) and Veronica Thomas (a current employee of the City) commenced a lawsuit against the State of Michigan, the Governor and the State Treasurer seeking: (a) a declaratory judgment that PA 436 violated the Constitution of the State of Michigan to the extent that it purported to authorize chapter 9 cases within which vested pension benefits might be sought to be compromised; and (b) an injunction preventing the defendants from authorizing any chapter 9 case for the City within which vested pension benefits might be sought to be reduced. *See Webster v. State of Mich.*, No. 13-734-CZ (Ingham County Cir. Ct. July 3, 2013) (the “Webster Litigation”)

5. Also on July 3, a lawsuit substantially similar to the Webster Litigation was filed by other active and retired City employees against the Governor and Treasurer. *Flowers v. Snyder*, No. 13-729-CZ (Ingham County Cir. Ct. July 3, 2013) (the “Flowers Litigation”).

6. Neither the Webster Litigation nor the Flowers Litigation named the City or the EM as a defendant. *Id.* See also Declaration of Kevyn Orr, Docket No. 11, at ¶109.

7. On July 16, 2013, the Governor assured the public at a press conference that the EM had not yet recommended a Chapter 9 filing for Detroit. He added: “The goal is not to be in bankruptcy, the goal is to get a resolution with creditors that allows Detroit to be successful.” See *Snyder says Orr hasn’t recommended a Chapter 9 filing for Detroit*, <http://www.detroitnews.com/article/20130716/METRO01/307160063> (July 16, 2013).

8. However, on July 16, 2013, the EM wrote to the Governor recommending that the City file for Chapter 9 bankruptcy. See Orr Declaration, Docket No. 11 at ¶ 112 & Exh. J. This news was not made public until after the City filed for chapter 9 protection on July 18, 2013.

9. On July 17, 2013, the Pension Systems commenced a lawsuit against the EM and the Governor similar in substance to the Webster and Flowers Litigation, but distinct in that it named the EM as a defendant. Docket No. 11 at ¶ 109.

10. On July 18, 2013, the Governor wrote to the EM purporting to authorize the EM to file a petition under chapter 9 for the City. Orr Declaration, Doc. 11 at ¶ 112 & Exh. K.

11. Also on July 18, 2013, the EM issued an order directing the City to file for chapter 9 bankruptcy, and the City filed its petition. *Id.* at ¶ 112 & Exh. L.

Pre-Deposition Agreements Between The Parties

12. On August 2, 2013, the Court entered an order (the “Scheduling Order”), establishing dates and deadlines for, among other things, concluding the depositions of fact witnesses by September 23, 2013, in connection with the adjudication of the Debtor’s eligibility to file for protection under chapter 9 of the Bankruptcy Code.

13. On August 19, 2013, AFSCME filed its initial objection to the City's eligibility to be a debtor under chapter 9. Relevant to the instant motion, AFSCME's arguments in its August 19 Objection included, but were not limited to, the following: (1) Public Act 436 violates the Michigan Constitution *as applied* insofar as it did not explicitly prohibit the Governor from authorizing a chapter 9 filing which he knew threatened to unconstitutionally reduce vested pension rights in violation of Article IX, Section 24 of the Michigan Constitution, Doc. 438 at ¶¶ 75-84; (2) the City failed to negotiate with creditors in good faith as required by section 109(c) of the Bankruptcy Code, Doc. 438 at ¶¶ 101-108; and (3) the entire chapter 9 petition was filed in bad faith insofar as the City (a) filed the petition to evade an imminent bad ruling in the Flowers and Webster Litigation, *id.* at ¶ 130; and (b) prepared, in concert with State officials, for a chapter 9 filing as a foregone conclusion before any negotiations with creditors were even contemplated. *Id.* at ¶¶ 23-27, 131.

14. On August 23, 2013, AFSCME filed on the record its notice of deposition for witnesses of the Debtor, including but not limited to Orr. *See* Doc. No. 582.

15. Also on August 23, 2013, AFSCME filed on the record its notice of subpoenas to ten (10) State witnesses, including but not limited to Governor Snyder.

16. On September 1, 2013, counsel for the City represented to AFSCME by email that it would agree to offer at least seven (7) witnesses in response to AFSCME's subpoenas – Mr. Orr; Mr. Guarav Malhotra from Ernst & Young; Mr. Charles Moore from Conway McKenzie; Mr. Kenneth Buckfire of Miller Buckfire; Mr. Lamont Satchel of the City; and a to-be-determined representative from Milliman. *See **Exhibit A***, Email from Geoffrey S. Irwin to Sharon L. Levine.

17. Counsel's September 1 email to AFSCME was clear that, as to these witnesses,

the City would “not attempt to limit [AFSCME’s] questioning to the 30b6 topics” contained in AFSCME’s notice of depositions “[s]ince these witnesses have been requested in their individual capacities as well.” *Id.*

18. In reliance upon this representation by counsel for the City, and with the caveat that AFSCME reserved the right also to depose Detroit Mayor David Bing at a later date if such a deposition proved necessary in AFSCME’s view at the close of discovery, AFSCME agreed only to depose the seven (7) witnesses listed in Paragraph 10, *supra*, and withdrew the balance of its subpoenas.

19. The State, in contrast, fought AFSCME tooth and nail over whether AFSCME should be permitted to depose any State witnesses at all. Mere moments after AFSCME, in an email sent at 4:13 PM on the Friday of Labor Day weekend, offered to limit its depositions to only five (5) of the ten (10) State witnesses whose depositions AFSCME had noticed, the State filed a motion to quash all of AFSCME’s subpoenas rather than engage in any meet and confer with AFSCME. *See* Docket No. 701 at ¶¶ 7-11.

20. In its motion to quash, the State argued only that discovery of the State employees was irrelevant to the chapter 9 case and therefore unduly burdensome. The State did not argue that any of the communications sought by AFSCME were protected by the common interest doctrine.

21. On September 1, 2013, AFSCME filed its response to the State’s motion to quash, making clear by its arguments that AFSCME would be seeking communications between State and City officials:

AFSCME’s challenge to the Governor’s authorization and the constitutionality of the authorization under Michigan law is, in part, an “as applied” challenge (i.e. a challenge which finds the Emergency Manager law unconstitutional based on the individual

facts of the case), which turns, in part, on the fact that the Governor knew the City intended to impair pension rights when he signed his authorization. At a minimum, AFSCME needs to probe in depositions regarding the Governor's and the State's views and conclusions and factually, among other things:

- whether, how and on what basis the State and Governor concluded the City was “insolvent,” as required for eligibility by 11 U.S.C. § 109(c)(3) and as defined in 11 U.S.C. § 101(32)(C);
- the nature extent and details surrounding the Governor's and State's input, influence and assumptions underpinning the purported proposed plan of adjustment, as opposed to other less drastic alternatives;
- the Governor's and the State's involvement in and influence over the City's lack of any effort to negotiate in good faith with creditors;
- the basis for the Governor's and the State's conclusion, participation in deciding or otherwise related to the City's assertion that it was “unable to negotiate with creditors because such negotiation is impracticable;”
- the City's bankruptcy petition should be dismissed because it was filed in bad faith;
- the failure of the Governor and the State to attach any contingencies to the authorization to file;
- why the Governor and the State chose in the authorization letter to rely on 11 U.S.C. § 943(b) without attaching contingencies on the authorization itself; and
- whether the Governor and the State acted in good faith in filing.

Docket No. 701 at ¶ 17.

22. The Court set a hearing date of September 10, 2013 for the State's motion to quash.

23. At 4:37 p.m. the day prior to the hearing, the State filed a brief asserting, for the first time, that the material sought by AFSCME was protected by the so-called “deliberative

process privilege.” *See* Doc. No. 790. In this late-filed brief, the State again did not argue that any common interest protection applied to the communications AFSCME was seeking to discover.

24. At the hearing on September 10, the State and AFSCME resolved their differences by agreeing, as memorialized on the record, that AFSCME would depose Governor Snyder and, if AFSCME deemed it necessary thereafter, would also have the right to depose Transformation Manager Baird and Treasurer Dillon.

25. In sum, the State has never – in either of its filed objections to producing witnesses under its control for depositions in this case – asserted a common interest with the City.

26. Further, to AFSCME’s knowledge, the City, prior to during the EM deposition, did not assert this privilege specifically with respect to communications with the State.

The Orr Deposition

27. On September 16, 2013, the EM was deposed by AFSCME and certain other parties objecting to the City’s eligibility to be a debtor under Chapter 9.

28. Among other things, counsel attempted to depose Orr regarding his communications with Governor Snyder and the Governor’s team as to what the Governor and Orr discussed about Orr’s plan to reduce vested pension rights; the applicability of Article IX, Section 24 of the Michigan Constitution to that plan; and the impact of the Flowers/Webster litigation on the EM’s decision to file under chapter 9 and the timing of that decision.

29. During his deposition, the EM refused, upon recommendation of his counsel, to answer questions about communications between the EM and the Governor or his staff which took place subsequent to Orr’s appointment as EM and at which counsel was present or on the

phone.

30. For example, although Orr admitted that he had conversations about the Flowers and Webster litigation with the Governor or somebody in the Governor's office after those lawsuits were filed on July 3 but prior to July 17 when the Pension System filed its lawsuit, the EM's counsel instructed him not to reveal the content of those conversations. *See* Rough Tr. 197:25-199:20. A copy of the rough transcript – not yet reviewed or certified by the witness – is attached as **Exhibit B**.

31. The EM also refused to answer questions about his conversations with the Governor between June 14 – when the City presented its intention to unconstitutionally reduce vested pension benefits – and July 3, because, according to the EM, “there’s a possibility there was counsel present at each of those meetings.” Rough Tr. 204:16-205:7.

32. When pressed, the City's counsel clarified that, indeed, he was in fact instructing Orr not to answer *any questions* which would reveal communications between the EM and State officials at which counsel for the City or State was participating and which had taken place *since Orr's appointment as Emergency Manager* -- whether related to the July 17 litigation which was filed by the Pension System against the City and State, the July 3 Flowers/Webster Litigation which was filed by active and retired employees against the State only, or “to the entire Chapter 9 filing”:

7 Q. Your counsel has asserted a joint defense?

8 A. Yes.

9 MR. SHUMAKER: Common interest.

10 Q. Common interest. Just want to clarify to make sure I
11 understand. We're obviously reserving our rights but
12 I want to understand whether you're claiming common
13 interest with regard to discussions relating to the
14 entire Chapter 9 filing or whether you are claiming
15 common interest just with regard to the state court
16 litigation?

17 MR. SHUMAKER: Well, it would be to both.
18 I mean, the common interest agreement captures what
19 Mr. Orr's been doing since he became Emergency Manager
20 where there was a common interest between the state
21 and the Emergency Manager's office. So both of those
22 would fall within to the extent that counsel was
23 involved in the communications.

Rough Tr. at p. 227.

33. At an earlier point in the deposition, however, the EM and his counsel appeared less fastidious about using privilege to guard communications which they apparently wanted to put on the record regarding the EM's alleged good faith desire for negotiations:

25 Q. Let me rephrase. When did you decide that the timing
1 of the Chapter 9 filing should be July 18th or July
2 19th?
3 A. Well, I didn't. I decided to make the request and my
4 intent was to have the ability to file available and
5 possibly executed as soon as I got it. It was without
6 talking or waiving privileges from my counselor
7 counsel and investment bankers, the concerns about us
8 losing control or being put in a situation because of
9 the ongoing litigation where I would not be able to
10 discharge my duties in an orderly fashion, in a
11 comprehensive matter to put the city on a sustainable
12 footing because of the litigation grew throughout June
13 and it was made clear to me that my desire to try to
14 continue to engage in discussions was running the risk
15 of putting my obligations under the statute in peril
16 and I think I was even counseled that I was being
17 irresponsible.

Rough Tr. at pp. 212-13.

ARGUMENT

34. The City and witnesses under its control cannot assert a "common interest" privilege as to communications between them and witnesses under the State's control prior to the moment the City and State became co-defendants on July 17, 2013.

35. The so-called "common interest doctrine" is really an exception to the "general

rule” that “disclosure of an attorney’s advice to a third party ordinarily results in waiver of the attorney-client privilege.” *Libbey Glass, Inc. v. Oneida, Ltd.*, 197 F.R.D. 342, 347 (N.D. Ohio 1999). The State and the City are not, obviously, the same party, and therefore communications between each one’s respective officers and/or attorneys ordinarily waives any attorney-client privilege which would otherwise shield those communications.

36. “[F]or the common interest doctrine to attach, most courts . . . insist that the two parties have in common an interest in securing legal advice related to the same matter and that the communications be made to advance their shared interest in securing legal advice on that common matter. **The key consideration is that the nature of the interest be identical, not similar, and be legal, not solely commercial.**” *High Point SARL v. Sprint Nextel Corp.*, 2012 WL 234024, at *5 (D. Kan. Jan. 25, 2012) (collecting cases).

37. The EM’s assertion through counsel at his deposition that the Governor and the City have a common legal interest with respect to “discussions relating to the entire chapter 9 filing” fails for the simple reason that only the City has a *legal* interest in the outcome of the chapter 9 proceeding. The Governor is not the debtor. Nor is the State, and to the extent it may be a creditor – at best a minor one, not among the City’s 20 largest, *see* Doc. 15 – it does not share an identical legal interest with the City in the adjustment of the latter’s debts. Any interest the State or Governor may have in wanting the City to be able to adjust its debts via bankruptcy is, at best, of a political or commercial nature. Because neither the State nor the Governor’s legal interests are affected by the City’s chapter 9 filing, it is irrelevant whether these parties feel they would have benefited from the City’s chapter 9 filing for other reasons. *See, e.g., North Am. Rescue Prods., Inc. v. Bound Tree Medical, LLC*, 2010 WL 1873291, at *4 (S.D. Ohio May 10, 2010) (“It is obvious that NARP and Ms. Norton shared a common interest

in defeating Bound Tree's action against Norton, but it is equally obvious that their joint interest was commercial—the desire for Ms. Norton not to be held liable so that, as NARP stated, ‘Ms. Norton's employment by NARP [would] continue.’”).

38. Nor did the City share a common legal interest with the Governor once the Flowers and Webster complaints were filed on July 3, because the Governor’s only legal interest in the Webster/Flowers litigation was in being permitted to approve the EM’s recommendation that the City file under chapter 9, while the City had no legal interest in its ability to file for bankruptcy until receiving that permission. The City effectively admitted as much in its responsive pleading to AFSCME and other parties’ objections to the City’s eligibility under Chapter 9, contending that it was not collaterally estopped by the state court’s order in the Webster litigation because the City was never “in privity with the *Webster* defendants” where “privity” is defined as “such an identification of interest of one person with another as to represent the same legal right.” Doc. No. 765 at 36-37 (quoting *Sloan v. City of Madison Heights*, 389 N.W.2d 418, 422 (Mich. 1986)).

39. Even assuming *arguendo* that the City and State officials did share a legal interest in the outcome of the Flowers and Webster litigation, that legal interest cannot shield all communications about chapter 9 between City and State officials since the EM’s appointment in March. The Governor and the City have undoubtedly discussed numerous facts with counsel present which were not directly related to a litigation strategy in the Flowers or Webster litigation – for example, the factual matter of when the Governor became aware of, and whether he supported as a matter of policy, the EM’s declared plan to make significant cuts to vested pension benefits. Where communications between parties touch upon both business and legal strategies, communications which “address primarily business and not legal concerns” must be

produced even if other communications are protected by the common interest doctrine. *Snap-On Business Solutions, Inc. v. Hyundai Motor Am.*, 2011 WL 6957594, at *2 (N.D. Ohio 2011). “These conclusions are reinforced by the rule that the Common Interest Privilege (like all privileges) should not be given broad application.” *Id.* (holding that defendant must produce, for example, what “is essentially a status report from [defendant] to a supplier describing how litigation affects their common business interests, not a communication about joint legal strategy”). See also *In re Megan-Racine Associates, Inc.*, 189 B.R. 562, 573 (Bankr. N.D.N.Y. 1995) (“The parties asserting the privilege must also demonstrate that *each communication* was made in the course of the joint-defense effort and was *designed to further that effort.*” (emphasis added)).

40. Regardless, the City and State officials have waived protection of any shared attorney-client communications allegedly still privileged by virtue of their common interests. The State has committed waiver by failing to assert a common interest defense in any of its papers or oral argument before this Court, despite having vociferously pressed other far-fetched (and also arguably waived) privilege arguments as to why the Governor and his team should not be subject to depositions, and by subsequently agreeing on the record to depositions on any subject contained in AFSCME and others’ objections to eligibility. The EM, in turn, waived privilege as to the “subject matter” of his considerations about the timing of the chapter 9 filing and its relation to the Flowers and Webster litigation when he “made . . . affirmative use” in his deposition of the substantive content of “counsel” he received in the presence of his attorneys, no doubt hoping to buttress his argument that he negotiated in good faith with creditors prior to ordering the chapter 9 filing, while simultaneously refusing to answer any other questions on the subject which he believed may have called for the content of conversations which took place

in the presence of his attorneys. *In re Megan-Racine Associates*, 189 B.R. at 572 n.7. At minimum, the EM's waiver should be deemed to waive the subject matter of timing of the chapter 9 filing with respect to Orr and all future City or State witnesses.

RULE 9014-1(g) STATEMENT REGARDING CONCURRENCE

41. Pursuant to Rule 9014-1(g), AFSCME states that at the Orr deposition, the City's counsel refused to permit Orr to answer certain questions on the basis of the common interest privilege with respect to communications with State officials, and the upon information and belief, neither the City nor State will permit any witness under their control to provide deposition testimony concerning certain relevant communications between City and State officials in the presence of legal counsel. According, AFSCME's request for the relief sought herein has already been denied by opposing counsel's instructions at the Orr deposition.

CONCLUSION

42. For all the foregoing reasons, AFSCME respectfully requests that this Court enter an Order (1) compelling Emergency Manager Orr to reappear for three (3) hours of deposition testimony concerning his communications with State officials in the presence of legal counsel since his appointment as Emergency Manager; and (2) confirming that no future deponent under the control of either the City or State can assert a common interest privilege as to communications between City and State officials concerning this chapter 9 case.

Dated: September 18, 2013

LOWENSTEIN SANDLER LLP

By: /s/ Sharon L. Levine

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98, City of Detroit Retirees*

SUMMARY OF ATTACHMENTS

The following documents are attached to this Motion, labeled in accordance with Local Rule 9014-1(b).

Exhibit 1	Proposed Form of Order
Exhibit 2	Intentionally Omitted (<i>Ex Parte</i> Motion to be Filed Concurrently)
Exhibit 3	Intentionally Omitted (No Brief Required)
Exhibit 4	Certificate of Service
Exhibit 5	Intentionally Omitted
Exhibit 6	Documentary Exhibits
Exhibit A	Email from Geoffrey S. Irwin to Sharon L. Levine
Exhibit B	Orr Deposition Rought Transcript

EXHIBIT 1

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

CITY OF DETROIT, MICHIGAN,

Debtor.

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) Chapter 9
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) Case No. 13-53846
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) Hon. Steven W. Rhodes
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**ORDER ON THE MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF
STATE, COUNTY & MUNICIPAL EMPLOYEES, AFL-CIO AND SUB-CHAPTER 98,
CITY OF DETROIT RETIREES' MOTION TO COMPEL TESTIMONY OF KEVYN
ORR AND ALL OTHER CITY AND STATE WITNESSES REGARDING CITY-
STATE COMMUNICATIONS PRIOR TO JULY 17, 2013**

This matter coming before the Court on the motion (the “**Motion**”) of the Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (the AFSCME retiree chapter for City of Detroit retirees) (collectively, “**AFSCME**”) for an order for an order to compel the deposition testimony of Kevyn Orr and all other City and State witnesses regarding City-State communications prior to July 17, 2013; and the Court having considered AFSCME’s Motion, and any responses thereto; and good cause appearing;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Emergency Manager Orr is ordered to reappear for three (3) hours of deposition testimony concerning his communications with State officials in the presence of legal counsel since his appointment as Emergency Manager.

3. No future deponent under the control of either the City or State will be permitted to assert a common interest privilege as to communications between City and State officials concerning this chapter 9 case.
4. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Signed on _____

Steven Rhodes
United States Bankruptcy Judge

EXHIBIT 4

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

CITY OF DETROIT, MICHIGAN,

Debtor.

)
) Chapter 9
)
) Case No. 13-53846
)
) Hon. Steven W. Rhodes
)

CERTIFICATE OF SERVICE

The undersigned certifies that on September 18, 2013, *The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees' Motion to Compel Testimony of Kevyn Orr and all Other City and State Witnesses Regarding City-State Communications Prior to July 17, 2013* was filed with the Clerk of the Court using the CM/ECF system, which provides electronic notification of such filing to all counsel of record.

Dated: September 18, 2013

/s/ Lisa Marie Bonito
Lisa Marie Bonito
Paralegal
LOWENSTEIN SANDLER LLP
65 Livingston Avenue
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EXHIBIT 6

EXHIBIT A

From: Geoffrey S Irwin [<mailto:gsirwin@JonesDay.com>]
Sent: Sunday, September 01, 2013 07:37 AM
To: Levine, Sharon L.
Subject: Re: Detroit -- depositions

Sharon:

Thank you, Sharon. In light of the compressed nature of the exercise, the voluminous written and document discovery that the City is responding to by Sept 13, the Court's recent rulings and organization of the eligibility dispute, and the overlap between eligibility discovery and the evidentiary hearing on our assumption motion now set for Sept 23-24, we would ask that you withdraw a number of your deposition requests in connection with your eligibility objections. We recognize your right to legitimate discovery, but we ask that you balance that against the aforementioned concerns before we are forced to seek relief from Judge Rhodes. Here is what we propose.

You have requested over two dozen depositions in total, 11 of which from individuals whom we represent, including a Rule 30b6 witness on 50 separate topics. We believe this is excessive and that a smaller number of witnesses can provide you with the information you seek. By way of example, the only other objector to request deposition discovery, the UAW and Flowers objectors, only asked for 6 total depositions.

I can represent to you now that we will put up some combination of witnesses to speak to the 30b6 topics. That combination will almost certainly include the three witnesses who provided declarations in our opening motion: Mr. Orr, Mr. Malhotra from Ernst & Young, and Mr. Moore from Conway McKenzie. Another set of topics will be addressed by a Miller Buckfire witness, likely Ken Buckfire. Finally, while the Milliman firm has separate counsel, a final set of topics will be addressed by one or more witnesses from Milliman.

Since these witnesses have been requested in their individual capacities as well, we will not attempt to limit your questioning to the 30b6 topics.

We therefore ask that you withdraw your requests for additional witnesses from Miller Buckfire and Ernst & Young, whose testimony would only be duplicative of that offered by the witnesses who will be selected to best address your specific inquiries.

That would leave two remaining City witnesses, Mr. Satchel and Mayor Bing. We are prepared to offer Mr. Satchel, but we ask that you withdraw your request for Mayor Bing. I would be happy to speak with you about it in greater detail, but the mayor would have very little relevant information about the facts at issue here, and there would seem to be no legitimate basis for subjecting the mayor to deposition here. If you will not withdraw the request, would you please provide us with the topics on which you propose to examine the mayor and why you cannot obtain that information from other witnesses?

We are prepared to move to quash if we cannot resolve this ourselves. The UAW and Flowers objectors have also requested the mayor's deposition, and we will be making the same request of them.

If we can agree to this group of witnesses, I can start scheduling the depositions shortly. Please advise at your earliest convenience.

Thanks. Geoff

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

From: "Levine, Sharon L." [slevine@lowenstein.com]
Sent: 08/30/2013 10:10 PM GMT
To: Geoffrey Irwin
Cc: Heather Lennox
Subject: Detroit -- depositions

Geoff:

Thanks for the call. Please make a proposal by email of the witnesses you would offer to produce and the ones you would ask us then not to seek to depose so that we can share that with our client. It makes it easier for us to respond if you can share the proposal or suggestions by email. Thanks.

Sharon L. Levine

Partner

Lowenstein Sandler LLP

T [973 597 2374](tel:9735972374)

M [973 768 9861](tel:9737689861)

slevine@lowenstein.com

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NEW YORK PALO ALTO ROSELAND

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EXHIBIT B

uncertified rough draft

1 Uncertified Rough Draft of Kevyn Orr
2 Monday, September 16, 2013
3 Detroit, Michigan
4 THE VIDEOGRAPHER: This is tape number one
5 to the videotaped depositions of Kevyn Orr being heard
6 before the U.S. Bankruptcy Court, Eastern District of
7 Michigan, case number 0227543.00001. This deposition
8 is being held at 150 West Jefferson, Detroit, Michigan
9 on September 16, 2013 at 10:08 a.m. My name is Mark
10 Meyers, I am the videographer, the court reporter is
11 Jeanette Fallon. And will the court reporter please
12 swear in the witness.
13 (Witness sworn)
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14 BY MR. ULLMAN:
15 Q. Good morning, Mr. Orr.
16 A. Good morning.
17 Q. My name is Anthony Ullman, I represent the retirees
18 committee. I'm going to be asking you some questions
19 this morning as will some others.
20 A. Okay.
21 MR. ULLMAN: Before we begin I would just
22 like to note for the record that we received the
23 document production that the city made on Friday and
24 it was in image file, essentially TIF images, over a
25 hundred thousand pages which were essentially, as the

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1 city knows, very difficult to work with. We obviously
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have not been able to get through them all in time for
3 this morning's deposition. We're going to continue to
4 review the documents and we're reserving our rights to
5 recall Mr. Orr for further deposition if after review
6 of the documents we feel it's appropriate to do so.
7 MR. SHUMAKER: We'd just note for the
8 record that we're abiding by the schedule set by the
9 Court and that the documents that were produced were
10 responsive to the more than hundred document requests
11 that the city received in connection with this motion
12 and so we reserve all rights and I'm sure we'll oppose
13 any effort to continue the deposition.
14 MR. ULLMAN: Duly noted.
15 Q. Mr. Orr?
16 A. Yes.
17 Q. You've been deposed before; correct?

18 A. Yes.
19 Q. So you know I will ask questions and I would
20 appreciate if you wait until I finish before you
21 answer and likewise I'll wait until you finish
22 answering before starting the next question.
23 A. Yes.
24 Q. And if there's any question of mine you don't
25 understand, please let me know and I'll rephrase it.

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1 A. Okay.
2 Q. You were appointed Emergency Manager on March 14th,
3 2013; is that right?
4 A. No.
5 Q. Okay, technically you were appointed Emergency

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Financial Manager on March 14th; is that right?

7 A. No.

8 Q. Okay. When were you appointed the Emergency Financial

9 Manager?

10 A. I think the final papers were signed on March 25th or

11 the 26th. The announcement or roll out was on the

12 13th and 14th.

13 Q. Okay. So it was announced on the 13th or 14th that

14 you were going to be the Emergency Manager?

15 A. Yes, effective March 25th.

16 Q. And then when -- you're familiar with PA 436?

17 A. Yes.

18 Q. So your original appointment was the Emergency Manager

19 manager; is that right?

20 A. Yes.

21 Q. And then when PA 436 became effective, you became the

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financial manager?

23 A. No.

24 Q. I'm sorry the Emergency Manager is that right?

25 A. Yes.

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1 Q. And PA 436 became effective on March 28th; is that

2 right?

3 A. Yes, I believe so.

4 Q. Okay. And PA 436 followed PA 4. Are you familiar

5 with PA 4?

6 A. Yes.

7 Q. And were you aware that PA 4 was struck by referendum

8 by voter referendum in Michigan in November 2012?

9 A. Yes.

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Q. Now, did you have any involvement in Public Act 4 in

11 Michigan?

12 A. No.

13 Q. Was there any involvement by Jones Day to your

14 knowledge?

15 A. Not to my knowledge.

16 Q. Now, PA 436 was enacted in December of 2012; is that

17 right?

18 A. I believe the statute speaks for itself but I do

19 believe that's right.

20 Q. Okay. And among other things it authorized the

21 governor to give authorization to the Emergency

22 Manager to file for bankruptcy under Chapter 9; is

23 that right?

24 A. Yes.

25 Q. And the text authorizes but do the not require the

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1 governor to place contingencies on the municipalities

2 proceeding under Chapter 9 is that right?

3 A. Statute speaks for itself but I believe that's

4 correct.

5 Q. And when did you first became aware of those

6 provisions in PA 436?

7 A. Probably mid to late January or February.

8 Q. Now, did you have any involvement in the drafting of

9 PA 436?

10 A. No, none whatsoever.

11 Q. Did Jones Day to your knowledge?

12 A. No, none whatsoever.

13 Q. Now, prior to the enactment of 436 did you have any

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14 communications written or oral with anyone from the
15 city of Michigan -- I'm sorry, the City of Detroit or
16 the state of Michigan regarding PA 436?
17 A. I believe that's a compound question but I'll answer
18 it. No.
19 Q. Now, at the time that you indicated you were
20 effectively made the -- became known that you would be
21 the Emergency Manager around the 13th or 14th of March
22 you were a practicing lawyer; is that right?
23 A. Yes.
24 Q. And you were at Jones Day; correct?
25 A. Yes.

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1 Q. And you've been engaged in the practice of law for a
2 number of years prior to 2013; correct?
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3 A. Yes, since 1983. I was licensed in February 1984.
4 Q. And your expertise was bankruptcy law is that right?
5 A. Started out as a trial attorney, eventually became a
6 bankruptcy litigator, eventually into all aspects of
7 bankruptcy law.
8 Q. So as of 2013 is it fair to say that you have
9 expertise with bankruptcy law?
10 A. Yes.
11 Q. In fact that's what you're best known for isn't it?
12 A. At this point I think so.
13 Q. And you worked on the Chrysler bankruptcy in 2009; is
14 that right?
15 A. Yes, 2008 through 2013.
16 Q. Okay.
17 A. Okay.

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18 Q. And you also spent a number of years at the office for
19 the US trustee; is that right?
20 A. Yes.
21 Q. And what was your role there?
22 A. I was initially brought in as deputy director of the
23 US. Trustee's office and upon the retirement of my
24 mentor and prior director, Jerry patch end, I became
25 director of that office.

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1 Q. Okay. And was your role there in a legal capacity in
2 terms of working with the department?
3 A. No, I was one of -- I was a component head of the one
4 of the 36 components in the United States Department
5 of Justice which was more in the nature of managerial
6 as opposed to legal responsibility.
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7 Q. Okay. So did you ever serve as an actual trustee in a
8 bankruptcy case?
9 A. At US trustee's office?
10 Q. Yes.
11 A. No.
12 Q. Ands also work for the RTC; is that right?
13 A. Yes.
14 Q. And that was in a litigation capacity?
15 A. Yes, litigation and supervisory.
16 Q. Now, you've never -- prior to becoming the Emergency
17 Manager you never ran a city; did you?
18 A. No.
19 Q. Did you -- prior to becoming the Emergency Manager did
20 you have any position that had responsibility for the
21 operations of a municipality?

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22 A. I'm just thinking through the various career positions
23 I had. Let me correct something. I think your
24 question was was I ever receiver or bankruptcy
25 receiver? Which one was it?

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1 Q. I think I asked whether you were ever a trustee.
2 While you were at the --
3 A. Not as a U.S. trustee but I had served in Florida as a
4 receiver and a trustee in a matter whose name escapes
5 me, it was some years ago. Had I ever done anything
6 in the operations of a city inside? No.
7 Q. And as of 2013 did you have any experience or
8 expertise with local or state budgeting?
9 A. Yes.
10 Q. What was that?

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11 A. At various times in my practice in Florida I was also
12 a land use attorney and from time to time would be
13 involved with various officials regarding planning and
14 zoning issues.
15 Q. Okay, but -- and the involvement was limited to
16 planning and zoning?
17 A. No, planning, land use and zoning, not inside the
18 government as a private practitioner.
19 Q. Okay. Did you have any involvement or experience in
20 actual budgeting for general, state or local
21 operations for all the various departments that are
22 involved in the running of a state or a city?
23 A. I'm trying to be accurate without overstating my prior
24 experience.
25 Q. Uh-huh.

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1 A. There were times where I was involved in various
2 campaigns, political campaigns, and as I said, land
3 use, planning and zoning, which would look at various
4 functions, but not for an entire city.
5 Q. Okay, not for budgeting the various operations for are
6 sanitation, for police, for all the functions that go
7 into a city or a state?
8 A. No, let me be clear if your question is was I ever
9 responsible for budgeting all the operations like in
10 Detroit which has 44 departments, the answer is no.
11 Q. Did you ever run a corporation?
12 A. I actually think I did.
13 Q. What was that?
14 A. With the RTC I was appointed as an officer for one of

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15 the financial institutions.
16 Q. Okay, and when was that?
17 A. I was at the RTC from '91 through '96 so sometime in
18 that period.
19 Q. And what position did you hold?
20 A. I don't recall.
21 Q. And what were your responsibilities; do you remember
22 -- first of all do you remember what corporation it
23 was?
24 A. I don't. It was one of the many savings and loans
25 that we had. I think it was in New Orleans. The head

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1 of the division sent me down to take it over with a
2 team.

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3 Q. Do you remember the name of the Sand L?

4 A. I do not.

5 Q. How long that lasted?

6 A. I think I was commuting off and on for two to four

7 years.

8 Q. Do you recall how many people worked for you at the

9 Sand L?

10 A. Several hundred.

11 Q. And that was obviously focused solely on the business

12 of that particular Sand L; correct?

13 A. Yeah, there were a bunch of other issues, regulatory

14 issues, liability issues, insurance, but the business

15 of a savings and loan or holding -- could have been

16 the holding company for a savings and loan.

17 Q. Outside of that have you ever worked in business?

18 A. At a managerial level?

19 Q. Yeah.

20 A. As I said, I think I was a receiver in another case in

21 Florida and perhaps a special master in another matter

22 in Florida.

23 Q. But just as a regular working for a condition?

24 A. Company.

25 A. No I've been an attorney all my professional career.

1 Q. Do you have any particular expertise in finance?

2 A. Other than being a bankruptcy attorney, no, my degrees

3 are in political science and law.

4 Q. And you indicated that you served as a trustee or

5 receiver once in Florida and what was the nature of

6 the company that you acted as receiver for?

7 A. I don't recall. I would be speculating. It was

8 affiliated with real estate in some fashion.

9 Q. Okay. And do you have an accounting degree?

10 A. No.

11 Q. Are you an actuary?

12 A. No.

13 Q. Is it fair to say that as of the time of your

14 appointment as Emergency Manager your sole expertise

15 was in law and particularly in bankruptcy law?

16 A. No. I think that while my principal expertise was in

17 law and bankruptcy law that in that capacity we

18 obviously as bankruptcy professionals deal with

19 financial issues and requirements that require us to

20 make judgment calls. I would not say that that

21 typically would include the level of expertise as an

22 actuary.

23 Q. Okay. And your sole -- your involvement in financial

24 issues as you indicated was gained in your capacity as

25 a bankruptcy lawyer; is that right?

1 A. Well, gained in my capacity as I said through the arc

2 of my career having to do with first trial attorney,

3 business law, banking and finance at the FDIT, then

4 the RTC then the Department of Justice and bankruptcy.

5 Q. Now, you had discussions with the governor of Michigan

6 or people working with or for him prior to becoming

7 Emergency Manager; is that right?

8 A. Yes.

9 Q. Can you tell me about those?

10 A. Yeah, I believe when you say people either working

11 with or for him, the initial discussion was at the end
 12 of January, could have been early February, but I
 13 think it was the end of January when we came in to
 14 pitch for the restructuring work for the City of
 15 Detroit before a restructuring team of advisors, which
 16 excluded -- the governor was not involved in that
 17 presentation.
 18 Q. And when was it first discussed -- when was the
 19 possibility if if you're acting as Emergency Manager
 20 first raised?
 21 A. I believe it was raised within a few days of us coming
 22 back from that presentation.
 23 Q. And how did that come about? What was said?
 24 A. Someone called my managing partner, as I understand
 25 it, I wasn't on that call, and asked if I might be

1 interested in serving as Emergency Manager and my then
 2 managing partner relayed that conversation to me.
 3 Q. And that -- is that the first time that you became
 4 aware that you were being considered for the Emergency
 5 Manager position?
 6 A. Yes, I believe that was in February.
 7 Q. Now, you had attended the presentation or the pitch
 8 for Jones Day that you just referred to before the
 9 restructuring committee of advisors?
 10 A. Yes, Jones Day was one of I believe 21 law firms that
 11 made presentations to that group about representing
 12 the city.
 13 Q. And what were the qualifications of Jones Day that
 14 were presented at that presentation?

15 A. We had prepared a book of the qualifications of the
 16 various attorney and the law firm and other
 17 representations both in court and out of court
 18 restructuring, having to do with healthcare, employee
 19 benefits, labor issues, having to do with
 20 environmental, bankruptcy, litigation, analyses,
 21 negotiations, mediation, the full panoply of work that
 22 the firm did.
 23 Q. And did you make any personal presentation at that
 24 meeting, did you pitch anything?
 25 A. We all spoke.

1 Q. Okay and what did you speak about as regards what you
 2 would bring to the table?

3 A. No, there were no presentations made so much with
 4 regard to what I personally might bring to the table.
 5 Q. Okay.
 6 A. Although we did discuss the experience of the team.
 7 There was no presentation for why any of us for
 8 instance should be Emergency Manager. There was
 9 discussion about what we perceived to be the difficult
 10 status of the city and how our law firm could provide
 11 representation to the city.
 12 Q. And was anything said to the committee at the meeting
 13 either through the book or orally as to your
 14 particular credentials and expertise?
 15 A. My credentials were included in the book as were the
 16 other attorneys at the presentation.
 17 Q. Okay. And your --
 18 A. Please.

19 Q. Did I -- were you done?
20 A. No, no, I was done, yeah.
21 Q. Okay. Were your credentials presented that presented
22 you as primarily as a bankruptcy lawyer?
23 A. As primary as a bankruptcy and restructuring attorney,
24 yes.
25 Q. And was there any discussion specifically of the

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1 possibility of a Chapter 9 filing at this
2 presentation?
3 A. I don't think so. I don't recall -- I don't -- I
4 don't -- I don't recall and the reason I say I don't
5 recall is there -- no, wait a minute. I don't know if
6 there was a discussion about the city. There was a

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7 discussion about other Chapter 9 cases, other cities.
8 Q. And what specifically do you recall being said about
9 the Chapter 9 filings in the other cases? Let me put
10 it this way. Did Jones Day refer to experience it had
11 in doing other Chapter 9 filings?
12 A. Yes, yes, various member of the team referred to that
13 experience, yes.
14 Q. And is it fair to say that the Chapter 9 experience
15 was a substantial part of the pitch that Jones Day was
16 making to this committee?
17 A. No.
18 MR. SHUMAKER: Object to the form.
19 A. No, it was a component of the presentation.
20 Q. That -- you said there was a written presentation or
21 written material?
22 A. There was a book, yes, there were written materials.

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23 Q. And do you know whether that's been produced?
24 A. I do not.
25 MR. ULLMAN: I would like to call for the
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1 production of that, please.
2 MR. SHUMAKER: We'll look into it. I would
3 ask here that if you're going to ask for documents
4 throughout the deposition that you follow-up with a
5 letter and email.
6 MR. ULLMAN: Sure.
7 Q. And do you recall whether there was any discussion at
8 this presentation as to the major problems that were
9 facing Detroit at the time?
10 A. I think there were discussions about Detroit's issues,

16

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11 various issues at the time, yes.
12 Q. And do you recall any discussion about the issues that
13 Detroit was facing regarding its pension liabilities?
14 A. I don't recall specific discussions and -- no, I don't
15 recall specific discussions but there may have been.
16 Q. Okay. And the same question for retirement benefits
17 in general apart from pension benefits. Do you recall
18 any discussion of that?
19 A. I don't recall specific discussions, but there may
20 have been. The discussions were more at a high level
21 as opposed to detailed level.
22 Q. And do you recall at a general level there being
23 discussion that Detroit was facing major issues
24 regarding its pension and other retirement benefit
25 liabilities?

17

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1 A. I know to be candid with you the pitch book contained
2 the information regarding employee benefits and labor
3 attorneys. One of the attorneys on the team was a
4 labor attorney but I don't recall there being specific
5 discussions in detail about those issues.
6 Q. Do you recall in general at the committee discussion
7 being raised that Detroit was in fact facing
8 substantial issues concerning its pension and other
9 retirement benefits and needed to find a way to deal
10 with those?
11 A. Here again I don't recall specific discussions. There
12 may have been. I just don't recall.
13 Q. Okay. Let me show you some documents, Mr. Orr.
14 A. Thank you.

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15 Q. You can't thank me until you've seen the documents.
16 A. It may refresh my recollection. I just don't recall.
17 MR. ULLMAN: Let's mark the first one as
18 Orr 1.
19 (Marked Exhibit No. 1.)
20 Q. Are there other copies of that? Thanks.
21 A. Okay.
22 Q. Okay, what we're marked as Orr number 1 is an email
23 beers the Bates stamp ending in 113.
24 A. Yes.
25 Q. Now, these either -- there are a couple of emails on

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1 this chain from January of 30 -- January 30, 2013.
2 A. Yes.

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3 Q. And the bottom one states that it's from Richard bare
4 to core reason ball. who is Richard bare?
5 A. Richard Baird is the governor's transition manager on
6 contract to the state of Michigan.
7 Q. And he says -- the message is to core reason star,
8 sorry I missed your call. Basically says I'm
9 inquiring about the potentiality of actually hiring a
10 member of your team for the Detroit EM spot.
11 A. Yes.
12 Q. And is this what you were referring to before in your
13 testimony?
14 A. Yes, I was on the phone with Steve Brogan, he can fill
15 you in, yes, that's what I was talking about.
16 Q. It's your testimony that prior to this you had not had
17 discussions with anyone from the state of Michigan or
18 the city of Michigan (sic) about the possibility of

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19 becoming Emergency Manager?
20 A. Absolutely not.
21 Q. And at the top it says if he asked if Kevyn could be
22 EM and that in fact is why he was calling?
23 A. Yes, I see that.
24 Q. And then that's what happened? He did call and -- he
25 had called core reason ball to ask about you being the

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1 EM?

2 MR. SHUMAKER: Object to the form.

3 A. This document -- I don't know, my testimony is that I
4 believe rich had called my managing partner who was
5 Steve Brogan. I don't know if he called Corinne Ball.
6 This seems to be an email exchange between him and

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7 orrrroughdraft (3).txt
Corinne Ball and then Heather Lennox and Amy Ferber.

8 Q. Okay fair enough. But you recall around that day

9 someone telling you that Baird had called talking

10 about the EM position and then shortly thereafter you

11 in fact got a call; is that right?

12 MR. SHUMAKER: Object to the form.

13 A. Yeah. I don't know if it was -- it was soon

14 thereafter, I don't know if it was that specific day,

15 but it was soon thereafter.

16 Q. And you then got -- did you get a call from Mr. Baird

17 directly?

18 A. No.

19 Q. Who did you get a call from?

20 A. Steve BROGAN.

21 Q. Okay that's your managing partner?

22 A. Yes.

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23 Q. And he told you that Baird wanted you to be the EM?

24 A. He told me that they had inquired whether I was

25 interested in applying to become the EM.

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1 Q. Okay and your response was?

2 A. No.

3 Q. Okay. And I take it there were further conversations?

4 A. Yes. That conversation was no. I did not want to

5 leave the firm and that we would tell them that.

6 Q. And did you have a conversation with Richard BAIRD

7 concerning the possibility of your becoming the EM on

8 or about this time frame at the end of January of

9 2013?

10 A. Yeah, I don't know if it was end of January, here

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11 again being in February, but I recall having a

12 conversation with rich BAIRD soon thereafter.

13 Q. Okay, let's look at the next document.

14 (Marked Exhibit No. 2.)

15 MR. ULLMAN: Which we'll mark as Orr 2.

16 Q. What we've marked as Orr 2 is a document ending in

17 Bates number 303.

18 A. Yes.

19 Q. You've seen this email chain before, Mr. Orr?

20 A. Yes.

21 Q. And in fact you are on both emails; are you?

22 A. I think I wrote the top one.

23 Q. Okay. Now, what is the role of Jones Day at this

24 time? Does it have an official role with Detroit or

25 with the state of Michigan?

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1 A. No, at this time, as far as I recall, Jones Day was a

2 candidate to be the attorneys for the city.

3 Q. Now, starting with the bottom email, this is from

4 Corinne Ball to you.

5 A. Yes.

6 Q. And she goes onto talk about food forethought for your

7 conversation with Baird. Obviously referring to a

8 conversation expected between you and Baird. She

9 makes reference to the Bloomberg foundation and

10 talking about whether someone should ask Baird about

11 financial support for the project and in particular

12 the EM. Can you tell me what that's referring to?

13 A. This is Corinne's email to me and I think she was

14 talking in some form about the Bloomberg foundation

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15 orrrroughdraft (3).txt
supporting Detroit efforts with the EM. And I think

16 -- I don't know if in this email or subsequently said

17 something along the lines of I don't want anything to

18 be extraordinary but I think at that point as I said

19 on the 31st so it wasn't on the 30th, it was the 31st,

20 that I wasn't interested in the job.

21 Q. Do you know what financial support she's referring to?

22 Did you have a conversation with her about this?

23 A. He we did not have a -- well we may have had a

24 subsequent conversation about financial support. we

25 -- I don't want to speculate but there may have been a

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1 conversation about supplementing the EM salary.

2 Q. An additional salary that would be funded privately?

3 Is that what you're saying?

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4 A. Yeah, I think the statute allows the EM to have

5 additional compensation and that may have been what

6 this was referring to or it may have been about the

7 Bloomberg foundation helping Detroit directly. I'm

8 not sure, but there may have been that discussion.

9 That seems to remind me of something along those

10 lines.

11 Q. The next statement from -- or the last sentence in

12 Ms. Ball's email says I can ask Harry for contact

13 information this kind of supports in ways nationalizes

14 the issue in the project. Do you have an

15 understanding of what she's referring to?

16 A. I do not.

17 Q. You don't know what she meant when she said she used

18 the word nationalized?

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19 A. orrrroughdraft (3).txt
No I don't know if she meant raises the profile to

20 help Detroit, I don't know.

21 Q. And you never asked her what she meant?

22 A. I don't recall asking her what she meant.

23 Q. In the top email in this exhibit you say that you have

24 a good conversation with Rich Baird this morning.

25 This is the 31st of January?

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1 A. Yes.

2 Q. So obviously either you called him or you called him

3 as of the 31st of January?

4 A. Yes, yes.

5 Q. It says in this email that you told him you were

6 interested in the job but there were some things that

7 made it impractical. Is that a fair summary of your

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8 --

9 A. Yes.

10 Q. -- your conversation with Baird?

11 A. Yes.

12 Q. And then he suggested you give it additional

13 conversation and you said you could say that there's a

14 glimmer of hope you would take it?

15 A. Right.

16 Q. And then you agreed to get back in touch next week?

17 A. Right.

18 Q. He said -- you go on to say that he tells you he Baird

19 that he likes your presentation as pulling for us to

20 represent the city.

21 A. Yes.

22 Q. Is that what he told you?

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23 A. Yes. orrrroughdraft (3).txt

24 Q. Do you remember anything else about that conversation

25 with Mr. Baird?

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1 A. No, I remember we had a conversation, I said I was

2 flattered but I really wasn't interested in the job, I

3 was very comfortable at Jones Day, didn't want to

4 leave my family, I had young children, but I would

5 give it some consideration and I think we ended it by

6 saying, you know, I probably don't want to take the

7 job but I am committed to working and I did say

8 working in lock step with the city and would be

9 willing to take any role in this respect.

10 Q. And was there any discussion during this conversation

11 as to what you would do if you ultimately did take the
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12 job of EM?

13 A. No. As I recall in this conversation based upon this,

14 the discussion was very high level and I think

15 Mr. Baird asked me to at least give it some reflection

16 and consideration and not turn it down outright.

17 Q. And you accommodated that request; right?

18 A. I started considering it, yes.

19 Q. Now, when he says we're pulling for us to represent

20 the city, that's as a restructuring counsel as you

21 talked about before?

22 A. Yes.

23 Q. And there was a program, wasn't there, that had been

24 designed to solicit counsel to act as restructuring

25 counsel for Detroit?

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1 A. I don't know if it was a program. I know that there

2 was a process that we and 20 other firms participated

3 in. I believe it was one day, maybe two, where we

4 flew out to the airport and presented our credentials

5 over 45 minutes.

6 Q. And was there particular firm that had designed or

7 that oversaw that process?

8 A. I don't know.

9 Q. Were you aware that Buckfire, are you familiar with

10 the Buckfire?

11 A. I know Miller Buckfire. They were at the

12 presentation. I don't know if they designed it.

13 Q. Were you aware they were playing a role in the --

14 A. Selection process?

15 Q. -- in the selection process?
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16 A. Yes.

17 Q. And are you aware that they were in fact effectively

18 assigning points to the various firms that

19 participated and doing some sort of tally to help a

20 decision be made?

21 A. Yes.

22 MR. SHUMAKER: Objection, foundation.

23 Q. And is it correct that Miller Buckfire was a banker

24 for Chrysler in the Chrysler bankruptcy?

25 A. No.

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1 Q. They weren't?

2 A. No. I'm trying to think. Did Miller Buckfire play a

3 role in Chrysler? I -- let's put it this way, I had

Page 44

4 not met anyone from Miller Buckfire in the Chrysler
5 representation.

6 Q. Okay. Let me show you the next document which we'll
7 mark as, what are we up to, 3?

8 (Marked Exhibit No. 3.)

9 Q. What we've marked as Exhibit 3 is a chain of emails,
10 the first page ends in Bates number 300. Have you
11 seen these before, Mr. Orr?

12 A. Yes.

13 Q. Let's first look at the first three emails in this
14 chain.

15 A. Uh-huh.

16 MR. SHUMAKER: The last chronologically or
17 the first ones?

18 MR. ULLMAN: No, the 207.

19 A. These are follow on from the prior email?
Page 45

20 Q. Uh-huh.

21 A. Okay.

22 Q. If we look at the one that's at the bottom of Bates

23 300 that carries over to the next one, this is an

24 email from Mr. Moss, from Daniel Moss to you?

25 A. Yes.

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1 Q. And I take it Mr. Moss is someone you worked with at

2 Jones Day; is that right?

3 A. Yes.

4 Q. And were you still at Jones Day at this time?

5 A. Yes.

6 Q. And Mr. Moss writes that nationalizing this -- making

7 this a national issue is not a bad idea. He goes on

Page 46

8 to say it gets police interceptor cover for the State
9 politicians, he goes on to say that if it succeeds
10 there will be more than enough patronage to allow
11 either Bing or snide to look for higher calls whether
12 a cabinet, Senate or corporate. Further this would
13 give you cover and options on the back end to make up
14 for lost time there. Can you tell me what he's
15 referring to?

16 MR. SHUMAKER: Objection, form, foundation.

17 A. Yeah, I would have to say that the document speaks for
18 itself. I think it also says that indeed this gives
19 them either greater incentive to do this right. I
20 think my response says no.

21 Q. Let me ask you questions about this. Mr. Moss says

22 making this a national issue is not a bad idea. Do

23 you have an understanding as to what he's referring to
Page 47

24 when he says making this a national issue?

25 A. No. What I think he's probably referring to is

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1 raising the profile of Detroit and the crisis it's in

2 so it can get some help.

3 Q. Did you have any conversations with Mr. Moss about

4 what he meant when he wrote this email?

5 A. No, other than that email exchange I don't recall any.

6 I think we probably did though. We talked on a

7 regular basis.

8 Q. Do you recall anything more specific about what he

9 meant when he wrote this is a national issue based on

10 the conversations you had with him?

11 A. No, there were emails going back and forth and I think

Page 48

12 my email back to him approximately eight minutes later

13 addressed the issue.

14 Q. Well, he goes on to say that if this gives them -- it

15 provides political cover to state politicians and it

16 gives them even greater incentive to do this right.

17 Do you have an understanding as to what the this is to

18 do what right?

19 A. I think this is trying to fix Detroit right in a broad

20 sense.

21 Q. And is that based on your conversations with Mr. Moss

22 or is that based on your reading of this email?

23 A. That's based on probably my reading of this email.

24 But let me think about conversations. It could have

25 meant to do this process right, whatever that is,

29

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1 restructuring, out of court or in court.

2 Q. So as you sit here now you don't have a specific

3 recollection or understanding as to exactly what

4 Mr. Moss meant; is that right?

5 A. I have worked closely with Dan Moss for a number of

6 years. We have conversations about a number of issues

7 but when you say do this right, I don't want to give

8 the wrong impression that there was some conversation

9 about what this right exactly meant. I assumed it

10 meant to do the process right, whatever that is.

11 Q. But you don't know what specifically Mr. Moss had in

12 mind because you never actually asked?

13 A. No if you're trying to describe a specific thing or

14 process to it, no.

15 Q. In the last sentence Mr. Moss writes, this would give

Page 50

16 you cover and options on the back end to make up for

17 lost time there.

18 A. Yeah.

19 Q. Do you have an understanding as to what he was

20 referring to when he wrote that, he Mr. Moss?

21 A. No, but I think what my -- my impression is, I think

22 what he was trying to say is if you can get -- make

23 the issue a national issue and elevate it so that you

24 get national support, that you may have greater

25 success and be able to get back to my life.

30

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1 Q. You mean success as Emergency Manager?

2 A. Success for the City of Detroit, yeah.

3 Q. Well, he writes this would give you cover and options

Page 51

4 on the back end, you Kevyn Orr?

5 A. Yeah, but I think if you read it in conjunction -- I'm

6 sorry, I didn't mean to cut you off.

7 Q. So my question is is he talking about you Kevyn Orr in

8 the context of being an Emergency Manager as you

9 understood it?

10 A. No, I don't want to parse the email and try to ascribe

11 meaning to it that's not true. You asked for my

12 understanding and my testimony is I think this is Dan

13 saying to me if you nationalize the issue that it

14 brings greater attention and perhaps the opportunity

15 for people to do this, meaning the project, right and

16 if it succeeds, then the other political members will

17 be given acknowledgment for the success. Further, it

18 might give me the ability to come back to the firm and

19 makeup for the time that I'd lose if I did this job.

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20 Q. The job being the Emergency Manager job?

21 A. Yes.

22 Q. Okay. Now, in the next email that's going up the
23 chain that is on the first page you say you wouldn't
24 do it.

25 A. Yes.

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1 Q. And when you say you wouldn't do it, again, do you
2 have -- what is the it that's being referred to? So
3 far no one's ever really identified what nationalizing
4 meant?

5 A. I'm telling you what I can think, what I meant by this
6 writing.

7 Q. Okay.

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8 A. what I meant was I wouldn't necessarily make it a

9 national issue and I think I say it would just bring

10 in the Demo Republican polarization on a national

11 scale and make Detroit a fall for the agendas of both

12 sides, meaning that people would try to use it as an

13 allegory for whatever their particular perception was.

14 I go on to say that the president would have to

15 criticize the trampling of democracy, and that's been

16 done here, not by the president I might add, and the

17 Republicans would rail against any further fed

18 bailouts and that's been said plus it deends anything

19 for Detroit a number of other municipals would have

20 their hands out in time, no one's in a blood to dole

21 out federal large guess. I think I go on to say this

22 is a morass of problems. So my thought was there to

23 be clear that I did not think it meaning to try to

Page 54

24 give the issues of Detroit national prominence was

25 particularly productive.

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1 Q. Now, in the top email you write or I'm sorry Mr. Moss
2 writes back to you and in the second paragraph he goes
3 on to say it seems the ideal scenario would be that
4 Snyder and Bing both agree that the best option is
5 simply to go through an orderly Chapter 9 and then he
6 goes on to say that that avoids a political fight over
7 the scope of any appointed Emergency Manager, moves
8 the Ball forward and then he goes on to say a pointing
9 Emergency Manager whose ability to actually do
10 anything is questionable would only certificate to
11 have kick the can down the wrong path.

Page 55

12 A. Yes.

13 Q. And can you tell me -- obviously this is -- Mr. Moss

14 here is referring to the possibility of a Chapter 9

15 filing.

16 A. Yes.

17 Q. And was this something that you discussed specifically

18 with Mr. Moss?

19 A. We probably did.

20 Q. Okay. And did you discuss the possibility -- so at

21 this point it was understood that one possibility, one

22 potential route of action, would be to file a Chapter

23 9 for Detroit if you took the Emergency Manager job;

24 is that right?

25 A. Yeah, I think that since we have been reviewing

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1 background information on Detroit and the possibility
2 of a Chapter 9 filing had been mentioned in 2005,
3 2006, 2009, 2011, 2012, up until this point, in fact I
4 think it was as I said I testified earlier this
5 morning the possibility of chapter 9s in other cities
6 4 been discussed that the issue after potential
7 Chapter 9 filing for the City of Detroit was not
8 particularly surprising discussion. That had been
9 discussed on many levels in the national press, in the
10 local press, it had been recommended by a prior -- in
11 2005 I think it was recommended by a prior employee --
12 senior employee of the city, so I think that
13 discussion was the typical type of discussion that
14 you'd have with your colleagues.
15 Q. And were you in fact at this time having those types

Page 57

16 of discussions with your colleagues at Jones Day as to
17 the possibilities of a Chapter 9 filing if you took
18 the Emergency Manager job and how that would be
19 implemented?
20 A. Yes but I don't want to give you the wrong impression
21 pause I think based upon what I've seen from some of
22 the briefing and some of the interrogatories the
23 impression is that that was predetermined and that's
24 not true. The reality is there was much discussion
25 about what the alternatives would be and the need to

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1 bring something that would bring order and efficiency
2 to the process given the number of interests that were
3 involved.

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4 Q. But it was certainly one of the possibilities that was
5 on the table as a course that might need to be
6 followed is that right?
7 A. Oh sure it had been discussed for the better part of
8 the prior decade.
9 Q. And in fact Mr. Moss is recommending the simplest
10 thing the best option would be to have the Snyder and
11 Bing the mayor and the governor, both agree to go
12 through an orderly Chapter 9?
13 MR. SHUMAKER: Object to form, calls for
14 speculation.
15 Q. That's what it says here doesn't it?
16 A. Well, I mean the document speaks for itself.
17 Q. My question is did you agree with that?
18 A. No, in fact I think we had discussions back and forth
19 about, one, me not wanting to take the job and two,

Page 59

20 whether or not the parties could reach concession
21 short of a Chapter 9 which would provide benefit to
22 the city in an orderly way.
23 Q. And ultimately that didn't happen; did it? The city
24 did file Chapter 9; didn't they?
25 A. Well, I mean, I think that we took a lot of time, I

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1 took 30 days when I came into the city, I said --
2 Q. Mr. Orr I don't mean to interrupt you but I don't want
3 to waste time. My question was pretty simple. I was
4 simply asking ultimately the city did file a Chapter
5 9; didn't it?
6 A. Yes and I was giving you an explanation for why that
7 occurred.

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8 Q. I'll get to that later. orrrroughdraft (3).txt

9 A. Okay.

10 Q. Now, in this email Mr. Moss goes on to say a pointing

11 of Emergency Manager whose ability to do anything

12 questionable would only serve to kick the can down the

13 wrong path and he's referring there to the can of the

14 Chapter 9 filing; isn't he?

15 MR. SHUMAKER: Objection, form. Calls for

16 speculation.

17 A. No, no.

18 Q. Now, in this email Mr. Moss recommends or suggests the

19 best path would be for Snyder and BING to voluntarily

20 go through a Chapter 9 and not go through the

21 Emergency Manager process; is that right?

22 A. No, you've asked that question before but you put a

23 little color on it this time and I don't think that's

Page 61

24 accurate. orrrroughdraft (3).txt

25 Q. well --

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1 A. Perhaps you can rephrase it.

2 Q. Certainly. He says, he Moss says, it seems the ideal

3 scenario would be that Snyder and Bing both agree that

4 the best option is to simply did through an orderly

5 Chapter 9. This avoids an unnecessary political fight

6 over the scope of authority of any appointed Emergency

7 Manager. I'm not going to read the rest. You see his

8 recommendation, his advice, his belief that the best

9 option is for Bing and Snyder to file Chapter 9?

10 MR. SHUMAKER: Objection to form.

11 A. I think you're coloring the email. As I said before,

Page 62

12 this is pretty typical banter between co-workers and orrrroughdraft (3).txt

13 colleagues about what could happen. You said it was

14 advice and recommendation. To the best of my

15 knowledge we hadn't been retained then and we were

16 just going back and forth about potential options.

17 Q. Okay.

18 A. So I don't want to give -- my testimony to give this

19 email more import and lead to the conclusion as some

20 have already said in this litigation, that there was a

21 predetermination to file chapter 9, but ultimately it

22 was the Emergency Manager, the appointed Emergency

23 Manager, who filed the Chapter 9, not Bing and Snyder;

24 is that right.

25 A. Yes, after he had been sued multiple times and didn't

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orrrroughdraft (3).txt

1 get a comprehensive proposal from any interested party

2 or creditor.

3 Q. Let me show you another document which we'll mark as

4 Exhibit 4.

5 (Marked Exhibit No. 4.)

6 Q. This is a chain of emails it starts with Bates number

7 295.

8 A. Yes.

9 Q. Have you seen this before, Mr. Orr?

10 A. Yes.

11 Q. In fact, you wrote some of this; didn't you?

12 A. Yes.

13 Q. If we focus on the top email --

14 A. Yes.

15 Q. -- you're talking again -- at this point in time had

Page 64

16 orrrroughdraft (3).txt
you decided whether to accept the Emergency Manager
17 job? This is later in the afternoon on January 31.
18 A. No, I didn't. I -- no, there was no time in the
19 initial two days that this came up that I decided to
20 accept the Emergency Manager job.
21 Q. Okay. And in this email you're giving some thoughts
22 on some of the issues that pertain to that; aren't
23 you?
24 A. Yes.
25 Q. And in particular you start talking about the

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1 legislation that pertains to the EM position. You
2 said you went back and reviewed various laws; do you
3 see that?
4 A. Yes.

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orrrroughdraft (3).txt

5 Q. And you talked about some laws in DC control board and
6 then you go on in the last sentence -- or I'm sorry,
7 the second to the last sentence to write, and I quote,
8 "By contrast Michigan's new EM law is a clear
9 end-around the prior initiative that was rejected by
10 the voters in November." You wrote that?
11 A. Yes.
12 Q. And by the new EM law, you were referring to PA 436?
13 A. Yes, I believe so.
14 Q. And by the end run you're talking about the voter --
15 the fact that PA 436 was enacted in response to the
16 fact that the voters' had rejected the prior law PA 4;
17 is that right?
18 A. Yes.
19 Q. And PA 436 was able to avoid another referendum by

Page 66

20 orrrroughdraft (3).txt
including tacking onto it a relatively minor
21 appropriation provision; is that right?
22 MR. SHUMAKER: Objection, calls for
23 speculation.
24 A. I don't know if that's the sum total of the difference
25 between 436 and the prior law but that was one of the

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1 components, yes.
2 Q. And when you wrote this question, Michigan's new EM
3 law is a clear end-around the prior initiative, it was
4 rejected by the voters in November, were you writing
5 truthfully?
6 A. I think I was writing my opinion at that time, yes.
7 Q. And then you go on and you say, the -- and that was
8 based on the analysis that you had done as of that

Page 67

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orrrroughdraft (3).txt

9 date?
10 A. Yeah, I think you would recognize that between the
11 30th when this first came up and the 31st, I think
12 this is later that afternoon, I spent sometime just
13 going through the other laws on a very cursory basis
14 to try to get a better understanding of what was being
15 asked.
16 Q. And the conclusion you reach is what you set out in
17 the email here; correct?
18 A. At that time.
19 Q. You go on to say, the new EM law gives local
20 governments four choices and you go onto list them?
21 A. Yes.
22 Q. And that is the list of the four choices you have,
23 that comes from the statute PA 436 doesn't it?

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24 A. I believe so. I don't have it in front of me, I have
25 it here, but I believe so without looking at it.

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1 Q. And so at that point in time you obviously were
2 familiarizing yourself with 436 and had read it;
3 correct?
4 A. Yes, I think what happened during this day is that I
5 initially thought of rejecting the concept of being an
6 EM, I then went back and said let me start informing
7 myself on what's required EM in looking under the law,
8 and then I was providing musings and streams of
9 consciousness of what my initial conclusions were.
10 Q. And you mention that in your writing here that one
11 option is a Chapter 9 bankruptcy with the governor's
12 approval; correct?

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orrroughdraft (3).txt

13 A. Yes.
14 Q. And you also make note that another option is
15 Emergency Manager; is that right? State appointed EM
16 is what you say?
17 A. Yes.
18 Q. And under PA 436 the Emergency Manager also had the
19 authority with the governor's approval to file for
20 Chapter 9; is that right?
21 MR. SHUMAKER: Objection, calls for legal
22 conclusion.
23 A. Yeah, the statute speaks for itself, but yes.
24 Q. And you were aware of that at the time you wrote this
25 email; correct?

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orrroughdraft (3).txt

1 A. I don't know if I read through the entire statute at
2 this time. As I said, I have trying to get some
3 familiarity. I think it's fair to say that I at some
4 point pretty close if I wasn't aware of it at that
5 time, I pretty closely became aware of it.
6 Q. Because you would certainly want to know what powers
7 the Emergency Manager would have if you decided to
8 take the job; correct?
9 A. I began to inform myself about the powers that the
10 Emergency Manager would have. But please understand
11 here again at this time I was trying to avoid taking
12 the job.
13 Q. And you go on then in the -- and you were -- I guess
14 -- were you aware that for either the case of the
15 Chapter 9 being filed with the governor's approval
16 without the Emergency Manager being involved or the

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orrroughdraft (3).txt

17 Chapter 9 filing with the Emergency Manager, that in
18 either case PA 436 did not require the governor to
19 impose any contingencies on the bankruptcy filing?
20 MR. SHUMAKER: Objection calls for legal
21 conclusion.
22 A. I don't recall if I had done a deep dive in that
23 question at this time. Please understand, counselor,
24 at this time I was doing a preliminary review of the
25 statute based upon I believe some published reports

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1 and a look at it online. I may have gotten to that
2 point, I just don't recall if at this time during that
3 day I had.
4 Q. Okay.

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5 A. But I did at some point.

6 Q. But you certainly knew that ultimately?

7 A. At some point I did, sure.

8 Q. Obviously. And then you go on in the next sentence in

9 this email to say "So although the new law provides

10 the thin veneer of a revision, it is essentially a

11 redo of the prior rejected law and appears to merely

12 adopt the conditions necessary for Chapter 9 filing."

13 A. Yes, I said that.

14 Q. And were you writing truthfully when you said that?

15 A. Yeah, and I think the balance of the paragraph, the

16 news report state that opponents of the prior law are

17 already lining up to challenge this law. So as I just

18 testified, this was my preliminary analysis based upon

19 a number of sources, some of them were the news

20 reports.

21 Q. And you were aware in fact that as you just indicated

22 that there were either challenges already made or that

23 were going to be made to the law?

24 A. I was not aware that there were challenges already

25 made. I was aware the news report states that

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1 opponents of the prior law were already lining up to

2 challenge the law.

3 Q. And did you have any understanding at this time as to

4 what those grounds of challenge were or may be?

5 A. No. As I said, this was, you know, within the span of

6 a day when this was going back and forth about what it

7 may require, I was beginning to familiarize myself to

8 some degree with the statute.

9 Q. Your email goes on to say you're going to speak with

10 Baird in a few minutes and see what his thinking is.

11 A. Yes.

12 Q. Did you speak with Mr. Baird that day?

13 A. I don't recall, but I probably did.

14 Q. And do you recall any discussions with Mr. Baird that

15 day on the subject of the possibility of a Chapter 9

16 filing by the city?

17 A. No. I don't recall any discussions with Rich Baird

18 about the possibility of a Chapter 9 filing at this

19 point, no.

20 Q. Okay. But clearly at this point in time one of the

21 things you were focused on was the possibility of a

22 Chapter 9 filing and the legal issues that might

23 pertain to that as reflected in this email; correct?

24 A. As I have said before, the issue of a Chapter 9 filing

25 had been discussed many, many times with regard to

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1 Detroit for the better part of the prior decade, so in

2 doing my sort of due diligence of what the statute

3 required, part of what I was doing was reading some of

4 those very articles that I mentioned earlier today

5 where some of the prior city employees were

6 recommending that there was a filing in 2005 in

7 connection with the cops, 2006 with the cops, 2009

8 with the SWAPS, so yes, Chapter 9 had been discussed

9 many, many times in the papers I was reading.

10 Q. And from all the discussions that you had to date with

11 various people including those at Joan day, were you

12 aware that one of the issues with PA 436, one

13 potential ground for challenge, was that it allowed
14 the governor to authorize a bankruptcy filing without
15 imposing a condition that would prevent pension
16 obligations from being impaired?
17 A. I don't know if I was aware of that issue at this
18 time, no.
19 Q. well, were you aware -- you became aware of it if not
20 then at some point shortly thereafter; correct?
21 A. Yeah, let me say this. There was no broad based
22 concern at this point about with what the authority
23 was with regards to pensions so any sort of
24 insinuation that that was the focus at this point is
25 just inaccurate. That wasn't true. This as I said

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17 Q. Exhibit 5 is just a printout of Article 9, Section 24
18 of the Michigan constitution. Do you recognize it as
19 such?
20 A. I mean, the document speaks for itself but that
21 appears to be what it is, yes.
22 Q. Okay, and I think your last answer you said that in
23 your view Section 24, Article 9 purports to protect
24 pensions and benefits in certain circumstances.
25 A. Yes.

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1 Q. And are you contending that the words of Article 9,
2 Section 24 means something other than what they say?
3 MR. SHUMAKER: Objection, calls for legal
4 conclusion.

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1 before was a very cursory and initial sort of review
2 of what I was being asked to do so when I had a
3 discussion with Mr. Baird later I would have some
4 information and that's what I gleaned based upon a few
5 hours since apparently I got the call -- I was
6 informed that day, that morning or the day before to
7 the time I was going to have a call that afternoon.
8 Q. But I take it at some point in time you became aware
9 that Article 9, Section 24 of the Michigan
10 constitution protects pension benefits from being
11 diminished or impaired?
12 A. I believe at some point in time I became aware that
13 Article 9, Section 24 purports to protect pensions and
14 benefits in certain circumstances, yes.

MR. ULLMAN: Let's mark Exhibit 5.

(Marked Exhibit No. 5.)

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5 A. Yeah, I -- here again, I think the document speaks for
6 itself. I think that my response to that issue is
7 throughout the arc of my career, whether in federal
8 government or in private practice at the Chrysler
9 case, there have been many state laws, some of them
10 quite sacrosanct, that have been abrogated by federal
11 law, not just bankruptcy law. At the RTC we preempted
12 state, New York state, rent control litigation, law;
13 we preempted California state escheat law; we
14 preempted -- and that was the model for 50s. In
15 Chrysler, we preempted 50 states have dealer franchise
16 laws that were preempted. So when I said I recognize
17 this, there are federal laws that preempt state laws.

18 MR. ULLMAN: I'm going to move to strike as
19 nonresponsive.
20 Q. Mr. Orr, I appreciate your perhaps trying to be

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21 helpful, but my question was really very limited and I
22 would appreciate it if you could just answer it.
23 MR. ULLMAN: Could I have my question read
24 back, please?
25 (Record read back as requested.)

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1 A. I think that calls for a legal conclusion and I
2 contend that they speak for themselves.
3 Q. Now, you made mention in your -- I think when you were
4 giving your prior response you made some elusion to
5 federal law.
6 A. Uh-huh.
7 Q. Is there any question in your mind that apart from
8 anything that may come into play under federal law,

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9 that the constitution of Michigan, Article 9, Section
10 24, prohibits pension rights from being diminished or
11 impaired?
12 MR. SHUMAKER: Objection, calls for legal
13 conclusion.
14 A. The document as I said speaks for itself. Certainly I
15 think I've said before that parties can negotiate a
16 resolution of contracts.
17 Q. That's -- that's not my question. Could you -- can
18 you read my question back? If there's anything about
19 it you don't understand I would be glad to rephrase.

20 A. Uh-huh.

(Record read back as requested.)

22 MR. SHUMAKER: Objection to form, calls for
23 legal conclusion. You can answer.

24 A. Yeah I think it does call for legal conclusion but as

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25 I said contractual obligations can be negotiated at

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1 any time.
2 Q. Let me rephrase it.
3 You understand what the constitution is
4 talking about is diminishing or impairing is
5 nonconsensual; correct?
6 MR. SHUMAKER: Objection, calls for legal
7 conclusion.
8 Q. Let me rephrase it so there can't be any ambiguity.
9 Clearly parties can if they so choose change their
10 contract rights?

11 A. Yes.

12 Q. Is there any question in your mind that Article 9,

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13 Section 24 of the Michigan constitution protects
14 pension rights from being diminished or impaired if
15 the beneficiaries of those rights do not agree
16 consensually to such diminishment or impairment?
17 MR. SHUMAKER: Objection, calls for legal
18 conclusion.
19 A. I think I've answered that before. I think there's
20 certain federal laws that allow for.
21 Q. I'm asking about independent of any federal law. The
22 Michigan constitution on its own, apart from any
23 overlay that you say may apply from federal law, is
24 there any question that the Michigan constitution,
25 assuming that the beneficiaries of the retirement

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1 orrrroughdraft (3).txt
obligations don't consent, any question that in that
2 circumstance the Michigan constitution prohibits
3 pension rights from being diminished or impaired?
4 MR. SHUMAKER: Objection, calls for legal
5 conclusion.
6 A. Here again Mr. Ullman, you're asking me, I'm a fact
7 30(b)(6) witness, you're asking me for a legal
8 conclusion about what the statute says. I'll say that
9 the statute speaks for itself and I certainly have
10 heard that people take that position.
11 Q. Okay, and I'm asking you -- I'm not asking you to give
12 a legal view. You took the position as an Emergency
13 Manager which is a nonlegal position; correct?
14 A. Yes.
15 Q. And I'm asking whether in your position as Emergency
16 Manager you came to an understanding as to what the
Page 85

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17 Michigan constitution provides in the course of
18 carrying out your duties as a Michigan -- or City of
19 Detroit Emergency Manager.
20 A. Let me put it to you this way. I certainly have heard
21 that parties maintain that you cannot diminish based
22 upon this constitutional provision. For a whole host
23 of reasons whether that's accurate or not there are
24 legal arguments being made. I understand you want me
25 to say that I understand what this statute says or
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1 what the constitution says and I say the language
2 speaks for itself. I understand what it says in plain
3 language.
4 Q. So you really just won't answer the question will you?
Page 86

5 orrrroughdraft (3).txt
MR. SHUMAKER: Objection to form.
6 A. No, I've answered your question the best I can.
7 Q. So is it your contention that apart from getting
8 advice from others, from counsel, as to what it means,
9 it the Michigan constitution, you yourself have no
10 independent view as to what the import of the Michigan
11 constitution is as regards pension rights?
12 A. I think the Michigan constitution speaks for itself
13 and as I've said many times I have a view in other
14 matters I've been involved with where state laws have
15 been preempted and I have a view that people can
16 negotiate contractual obligations. If your an asking
17 for a legal conclusion as to what the constitution, I
18 don't think that's appropriate for me to make. I do
19 understand what the statute says, though.
20 Q. Fair enough.
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orrrroughdraft (3).txt
21 Let's go onto the next email, which is --
22 will be marked as Exhibit 6.
23 (Marked Exhibit No. 6.)
24 Q. This is an email, you were involved in it.
25 A. Uh-huh.
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1 Q. It ends -- the first page ends in Bates number 216.
2 These are emails between Richard Baird and you; do you
3 see that?
4 A. Yes.
5 Q. Now, is it correct that as of this time it had been at
6 least informally decided that you would take the EM
7 position?
8 A. I don't know if that's correct as of February 20th.
Page 88

9 orrrroughdraft (3).txt
what I do know -- let me -- well, let me read the
10 email.

11 I don't know if I had actually informally
12 agreed to take the job at that time. what I do know
13 is that there were discussions about me taking the job
14 and that I believe the mayor had said that he wanted
15 to meet me and have a discussion about what the
16 relationship between the Emergency Manager and the
17 mayor would be.
18 Q. Let me look -- and direct your attention to the bottom
19 email, second sentence. This is from Baird to you.
20 A. Yeah.
21 Q. It's talking about a conversation Baird had with the
22 mayor. He says he Baird writes told him the mayor
23 that there were certain things I would not think we
24 could agree to without your review. He's writing to

Page 89

25 orrrroughdraft (3).txt
you?

9

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1 A. Yes.
2 Q. So this is Kevyn Orr's review?
3 A. Yes.
4 Q. Assessment and determination (such as keeping the
5 executive team in its entirety).
6 A. Yes.
7 Q. Aren't those -- the ability to have the mayor's
8 executive team kept on in its entirety, isn't that
9 something that's within the authority of the Emergency
10 Manager?
11 A. Yes.
12 Q. And so in saying that we can't make this determination

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13 orrrroughdraft (3).txt
without Kevyn Orr's review and determination, does
14 that not indicate that by this time that you had at
15 least told them you would take the position of EM?
16 A. No.
17 Q. So if that's the case why as you understand it would
18 Mr. Baird be telling the mayor that there are things
19 he couldn't agree with without getting your sign-off
20 on?
21 A. As I recall at this time, we were still discussing
22 whether or not I would take the job. I don't recall
23 how it came up, but there was some discussion about
24 what the EM's quote unquote partnership would be like
25 with the mayor. I also recall at this time I was told

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1 that there were other candidates that were being
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2 reviewed, but that they wanted to, meaning Rich,
3 wanted to continue to have discussions going forward
4 and this is one of the issues that came up in those
5 discussions.
6 Q. You agree that he Baird is writing this email that he
7 couldn't agree to changing the mayor executive team
8 without your, Kevyn Orr's review and determination;
9 correct?
10 MR. SHUMAKER: Objection, form.
11 A. I think the document speaks for itself. That's what
12 it says, but in February, as I said, it was still
13 preliminary and in fact I think the discussion that we
14 were having at that time was that even the mayor
15 wanted to meet me, I have certainly interested in
16 meeting him, prior to me deciding to take the job.

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17 Q. And this email does not say that Baird can't make --
18 may reach an agreement without the assessment, review
19 and determination of whoever it is that ends up taking
20 the EM position; does he?
21 A. No, the document speaks for itself but I have no way
22 of knowing if similar emails were sent to other
23 candidates. I don't know.
24 Q. Now, at the end of this email Mr. Baird writes we'll
25 broker a meeting via note between you and the mayor

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1 personal assistant that is not FOIAAble. Do you have
2 an understanding of what that means to be nonFOIAAble?
3 A. I think that means that whatever discussions they have
4 aren't subject to the Freedom of Information Act
5 either state or federal.
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orrroughdraft (3).txt

6 Q. And you have an understanding as to why Mr. Baird
7 wanted meetings between you and the mayor personal
8 assistant to be not subject to FOIA?
9 A. I don't -- I don't read this email as saying a meeting
10 meeting between me and the personal assistant.
11 Q. He says we'll broker a meeting via note between you
12 and the mayor's personal assistant who is not
13 FOIAAble?
14 A. Yeah, as I read this email -- I never met with the
15 mayor's personal assistant so let's get that out of
16 the way. As I read this email, we were talking about
17 a meeting between me and the mayor.
18 Q. Right, and isn't he -- fair enough. And isn't Baird
19 saying that he wants to set up a meeting via going
20 through the mayor's personal assistant who is not

Page 94

21 FOIAAble? orrrroughdraft (3).txt
22 A. I think that's a fair reading.
23 Q. And do you know why he wanted to go through the route
24 of setting up this meeting through someone who is not
25 FOIAAble?

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1 A. No.
2 Q. Did you subsequently have a meeting with the mayor?
3 A. Yes.
4 Q. And what was said at that meeting?
5 A. I think the first meeting was -- my impression of the
6 first meeting was just a meet and greet. I think the
7 mayor wanted to get an assessment of who I was as
8 potentially coming into the city as a potential
9 Emergency Manager and to sort of get to know me, start
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10 to get to know me.
11 Q. How many meetings were there with the mayor before you
12 became the EM?
13 A. At least two.
14 Q. Do you recall when they took place?
15 A. I do not.
16 Q. Okay.
17 A. Somewhere around this time frame.
18 Q. And was the subject of Chapter 11 filing discussed at
19 either of those meetings?
20 A. No.
21 Q. Was the subject of a potential Chapter 11 filing
22 discussed at either of those meetings? I'm sorry.
23 Let me rephrase my question.
24 A. I can answer your question. No, neither Chapter 9 nor

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1 Q. So you didn't discuss even the potentiality of a
2 Chapter 9 filing at either of those meetings with the
3 mayor; is that your testimony?
4 A. Yes. I don't recall -- let me. We may have -- I was
5 a bankruptcy attorney, we may have discussed it, but I
6 don't recall discussing specific issues regarding
7 Chapter 9 or to the extent people are suggesting that
8 that was predetermined. I don't recall those kinds of
9 discussions.
10 Q. Do you recall any discussion with the mayor as to the
11 issues that the city faced as a result of the pension
12 obligations?
13 A. No. Frankly our first meeting was more me telling him
Page 97

14 how happy I was to meet him, I was a basketball fan,
15 particular fan of his for many years, getting his
16 understanding of the city.
17 Q. I'm sorry, Mr. Orr, I don't mean to interrupt you, but
18 that really wasn't responsive. My question was really
19 a yes or no question. I didn't ask tell me everything
20 you said. I asked a specific question. Why don't you
21 read it back?
22 A. What was your question again?
23 (Record read back as requested.)
24 A. No, I don't recall that discussion.
25 Q. And the same question for both meetings so I'm not

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1 sure if that question was limited to the first
Page 98

2 meeting?
3 A. I don't recall having those discussions in either
4 meeting.
5 Q. Do you recall any discussion in either meeting with
6 the mayor about the issues the city was facing with
7 its obligations for healthcare benefits for retirees?
8 A. No, I don't recall either meeting having those
9 discussions.
10 Q. Show you the next document which we'll mark as Exhibit
11 7.
12 (Marked Exhibit No. 7.)
13 Q. And I would like you to in particular if you would to
14 focus on the email at the top of -- let me identify
15 this first. This is an email chain beginning at Bates
16 page 459 and what I would like to you do Mr. Orr is
17 focus on Bates page 461, the email at the top of that
Page 99

18 page.
19 A. 461?
20 Q. Please.
21 A. Yes.
22 Q. You see at the top there's an email from you to
23 Mr. Baird?
24 A. Yes.
25 Q. 8 o'clock, 8:17 at night?

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1 A. Yes.
2 Q. And you talk among other things about what would be
3 expected on day one. Do you see that at the bottom?
4 A. Yes.
5 Q. So is it fair to say that by this time you had already
Page 100

6 known that you were going to take the EM job?

7 A. No.

8 Q. So why were you then asking about what you can expect

9 on day one?

10 A. Because at this point I was still considering whether

11 or not I would take the job but I was doing my due

12 diligence. As you can see from the email, there was

13 this proposed partnership agreement that the mayor

14 submitted. I say that my intend an is not to

15 undermine the mayor role or the good faith with which

16 I suspect all parties will move forward but I wanted

17 to include qualifications not just from my role as EM

18 but also for the future so there was still no

19 determination that I would take the job but I was

20 moving forward on trying to get an idea of what was

21 expected of me if I were to take the job and also for
Page 101

22 instance when I look at the documents, representative

23 samples of the CBAs and the swap and related

24 agreements.

25 Q. You write in the last paragraph that you've been

♀

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uncertified rough draft

1 pouring over the law and the board's findings to

2 assure that you have some idea about what's

3 permissible and expected on day one; correct?

4 A. Yes.

5 Q. And by permissible and pouring over the law you meant

6 you wanted to understand and be aware of what was

7 permissible under the law; is that right?

8 A. Yes, as I said earlier today my initial look was very

9 high level and cursory and then as this discussion
Page 102

10 evolved, I started digging down more into the law.

11 Q. And on the attachment that we have here, which begins

12 at Bates page 463, the attachment to this email chain;

13 do you see that?

14 A. Yes.

15 Q. And this is a list of various items that are under

16 discussion; is that right?

17 A. Yes.

18 Q. And you see item 7?

19 A. Yes.

20 Q. It says labor, retiree and benefit initiatives will be

21 pursued jointly by the mayor and the manage to the

22 extent permitted by law?

23 A. Yes.

24 Q. And that was part of the current thinking at the time,

25 was it, that that's one of the things the EM was going
Page 103

♀

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uncertified rough draft

1 to do?

2 A. Yes, I think it was envisioned in the statute and this

3 I believe came off of the mayor initial proposal, but

4 yes.

5 Q. And the retirees and benefit initiatives, those

6 included initiatives to deal with pension and

7 healthcare costs; is that right?

8 A. To be honest with you as you can see from my email on

9 page 461, I was still trying to get an idea of exactly

10 what they included by asking for the CBAs and the

11 background documentation so I don't want to give you

12 the wrong impression that item number 7 has the level

13 of specificity that you seem to be suggesting. I was
Page 104

14 still getting an idea of what they were.

15 Q. I'm -- I wasn't suggesting anything. I was asking

16 whether the retiree and benefit initiatives included

17 initiatives related to the pension and retirement

18 healthcare costs?

19 MR. SHUMAKER: Objection, form.

20 A. They might, but to be honest with you, at this time

21 there wasn't that level of specificity. They

22 certainly -- the document speaks for itself. Seven

23 says labor retiree and benefits initiative, but to the

24 extent your question is trying to suggest that there

25 were detailed levels, no, I was still doing my due

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diligence.

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2 Q. There was some general understanding that there were

3 issues pertaining to pension and healthcare benefits;

4 is that right?

5 A. I -- yes, I think there had been issues concerning

6 pension and healthcare benefits for years as I poured

7 over the consent decree and the various reports made

8 by the state from 2010 forward, yes.

9 Q. You were aware that the pension costs and healthcare

10 costs were among the more pressing issues that the

11 City of Detroit was facing at the time?

12 A. I'm not sure I was aware that they were among the more

13 pressing issues at that time. I certainly knew that

14 they were significant. Frankly, at that time I was

15 looking at debt.

16 Q. And at this point in time did you do any analysis as

17 to what was permissible under law regarding retiree

Page 106

18 benefits?

19 A. No, I think my prior email at Bates stamp 461 says I

20 needed to get more documentation to get an

21 understanding.

22 Q. And your email here at the top of page 461 says I've

23 been pouring over the law?

24 A. Yes.

25 Q. To find out about what is permissible and my question

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was did that involve any consideration of what was

permissible under the law as regards pension and

healthcare benefits?

A. It might have, but the permissible that I was

referring to was permissible writ large as far as what

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6 were the Emergency Manager's duties, which necessarily

7 could have included, but I don't want to give you the

8 wrong impression that that was the fundamental focus

9 or the primary focus of what I was saying here. It

10 wasn't. It was the Emergency Manager's duties writ

11 large.

12 Q. And when you say you were pouring over the law, you

13 yourself were doing legal analysis, reading various

14 laws; is that right?

15 A. Yes, I was trying to get background information, yes.

16 Q. And as part of that background information did you

17 read Article 9, Section 24 of the Michigan

18 constitution?

19 A. I may have.

20 Q. Is there any question in your mind that you didn't?

21 A. I -- if you have a document to refresh my recollection

Page 108

22 I'm happy to look at it. Sitting here on this day on
23 February 20th, I don't recall whether or not I read
24 that article of the constitution.
25 Q. There's no question that at some point after February

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1 20th you read Article 9, Section 24 of the Michigan
2 constitution correct?
3 A. My testimony is it may have been before or after the
4 20th. I don't recall whether I did that sitting here
5 today.
6 Q. Okay, but it was either one or the other but you
7 certainly have read it?
8 A. Yes, I've read it. I read it today.
9 Q. And you read it before you became Emergency Manager;

Page 109

10 didn't you?
11 A. Yes.
12 Q. One other question on this document actually. As you
13 look at page 460, at the bottom there's a February 21
14 email.
15 A. Yes.
16 Q. And it refers to .8 of the attachment. This again has
17 to do with the mayor existing executive team; right?
18 A. Yes.
19 Q. And in this time this is from Mr. Baird again; right?
20 A. Yes.
21 Q. And he's really explicit. He says other than a few
22 grammatical knits, and some more language around point
23 8 so we can manage expectations if Kevyn needs to make
24 some personnel changes. So he's clearly referring
25 here to you making personnel changes that could affect

Page 110

1 the mayor existing executive team; isn't he?
2 A. Yes, this wasn't written to me, but I'll read it. I
3 mean to myself. Yes, document speaks for itself but
4 that seems to say that.
5 Q. Isn't it clear at this point that it was envisioned
6 and understood that Kevyn Orr, you Mr. Orr were in
7 fact going to be the Emergency Manager for the City of
8 Detroit?
9 MR. SHUMAKER: Objection calls for
10 speculation.
11 A. No.
12 Q. And you agree the document speaks for itself don't
13 you?

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14 A. I just said that.
15 MR. ULLMAN: Maybe this would be a good
16 time for a break.
17 THE VIDEOGRAPHER: Going off the record at
18 11:28 a.m.
19 (A brief recess was taken.)
20 THE VIDEOGRAPHER: We're back on the record
21 at 11:42 a.m.
22 MR. ULLMAN:
23 Q. Mr. Orr, is it correct that prior to the official
24 announcement that you said was in March -- on March
25 13th or 14th you had had conversations with the state

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1 where you said that you would take the OM job -- I'm

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2 sorry the EM job?

3 A. I think at that time in all fairness it was EFM.

4 Q. Correct.

5 A. Prior to the official announcement? I think at some

6 point, I became the candidate select but I don't think

7 that I actually accepted the job -- that I was going

8 to take the job until the day I resigned, which was

9 March 15th. I mean, I may have said yes I'm all in on

10 something like that subject to background

11 investigation and stuff like that.

12 Q. And that would have been sometime prior to March 13th?

13 A. I think I became the finalists sometime prior to March

14 13th, yes.

15 Q. And that's when it became final subject to passing the

16 background, yes?

17 A. Yes, and resigning from the firm and some other

18 things.

19 Q. Up to the time that it became official that you were

20 going to be the EM, did you have any conversations

21 with anyone at the state or city level about the

22 possibility of the Chapter 9 filing?

23 A. Probably, yes.

24 Q. And can you tell me with whom those conversations took

25 place and when?

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1 A. No, I don't think I had them -- those types of
2 conversations with Rich Baird, those were more about
3 the job requirements and background. If you have
4 something to refresh my recollection.
5 Q. I'm just asking a question.

6 A. Yeah, I don't recall -- I may have had about filing a
7 Chapter 9 or about the possibility of a Chapter 9?
8 Q. Either, both.
9 A. Okay. I don't recall.
10 Q. Okay. Now, at some point you -- when you became the
11 Emergency Manager or the Emergency Financial Manager
12 you became an officer of the state and subject to the
13 state laws; is that right?
14 A. No. I am a contractor to the state.
15 Q. But you do -- you are subject to the state laws; are
16 you not?
17 A. Yes, I think --
18 Q. And in fact you're obligated to uphold the state laws;
19 are you not?
20 A. I don't know if my contract says that I'm obligated --
21 I think my contract says I'm obligated to do my duties

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22 to the best of my abilities and I think it requires me

23 not to have any obligations due to the state, but I

24 don't know if it requires me to uphold state laws.

25 Q. Is it your view that as Emergency Manager you are not

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1 required to comply with state laws and obey state

2 laws?

3 A. I think it's my view as the Emergency Manager that I'm

4 required to discharge my duties as the best of my

5 ability to rectify the financial emergency of the

6 city.

7 Q. Okay, thank you. Can you have my question read back,

8 please? And I would like an answer.

9

(Record read back as requested.)

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1 required to comply with state laws and obey state
2 laws?

3 A. I think it's my view as the Emergency Manager that I'm
4 required to discharge my duties as the best of my
5 ability to rectify the financial emergency of the
6 city.

7 Q. Okay, thank you. Can you have my question read back,
8 please? And I would like an answer.

9 (Record read back as requested.)

10 A. The reason I said what I said is because I think the
11 statute allows me to abrogate certain state laws and
12 so when you say you comply with state laws, 436
13 clearly allows me not to comply with certain laws, so
14 --
15 Q. And -- okay so it's your view that under PA 436 you
16 have the ability not to comply with certain state
17 laws?
18 A. Yes.
19 Q. And what section of 436 gives you that ability?
20 A. There's section 12 gives me the authority to abrogate
21 contracts, to readdress financial agreements, there
22 are a number of powers in the statute, take over
23 underfunded pensions if that's what you're looking
24 for, there are a number of provisions in the statute
25 that mean I don't have to comply with state law.

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1 Q. Okay. And PA 436 is itself part of state law; right?
2 A. Yes.
3 Q. So if you did something that's specifically authorized
4 under PA 436 would it be in violation of state law?
5 A. No.
6 MR. ULLMAN: Objection, calls for legal
7 conclusion.
8 Q. So I'm asking you is there anything in PA 436 that
9 specifically says that you're entitled to not comply
10 with state law?
11 A. I -- we're being somewhat circular here.
12 Q. It's like cat and mouse. Is there a general provision
13 in PA 436 that says the Emergency Manager need not

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14 comply with the laws of Michigan State?
15 A. My testimony is --
16 Q. Can you just answer my question? You could say yes,
17 no or I don't know?
18 A. I'm trying to answer your question if you let me.
19 Q. I would like a direct answer to my question, not a
20 speech?
21 A. I'm trying to give you a direct answer.
22 Q. Okay, let's hear it.
23 A. I was going to give it to you. The statute allows the
24 Emergency Manager to take certain actions which by
25 definition would impact certain state laws. Your

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1 question was whether there's a general prohibition
2 that exempts. That may be a legal conclusion because
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3 there are many powers under 436 and someone may
4 conclude, the Court for instance, that generally the
5 intent is to allow the Emergency Manager to do certain
6 things in financial emergency. I'm trying to respond
7 to your question as the Emergency Manager. There are
8 certain laws that clearly under 436 I have the
9 authority to abrogate.
10 Q. Is the constitution of the state of Michigan one of
11 those?
12 A. I think that's a legal conclusion.
13 Q. No I'm asking your understanding as the Emergency
14 Manager.
15 A. My understanding is that's a legal conclusion.
16 Q. You -- apart from saying it's a legal conclusion, do
17 you have a view on that one way or the other? I'm not

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18 orrrroughdraft (3).txt
asking for your legal opinion, I'm asking for your
19 view in your capacity as Emergency Manager whether PA
20 46 allows you to disregard the strictures of the
21 Michigan constitution?
22 A. I think that's a legal conclusion. I'll explain it if
23 you want me to.
24 Q. I'm just asking whether you have a view.
25 A. Yes, I think it's a legal conclusion.

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1 Q. And what is the legal conclusion that you believe
2 exists?
3 A. Without going into discussions with attorneys and
4 others, the legislature of the state of Michigan is
5 presumed to have an active 436 with a full
6 understanding of other state laws including the
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7 constitution prohibition you're focusing on.
8 Q. I didn't focus on the constitution prohibition?
9 A. Well you focused on it today.
10 Q. In my question I asked a general question. I did not
11 focus on a specific provision.
12 A. Okay, then we'll do it generally. My understanding is
13 that the Michigan legislature is presumed to have
14 understood the requirement of other state laws and in
15 choosing to enact 436 gave the Emergency Manager
16 certain powers which may conflict with those state
17 laws.
18 Q. I'm asking about the constitution now.
19 A. Including the constitution. I said it was.
20 Q. Does the legislature of the state of Michigan have the
21 power through an enacted law to allow people acting

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22 orrrroughdraft (3).txt
for the state or for the local governments of the
23 state to disregard the Michigan constitution?
24 MR. ULLMAN: Object to form, calls for
25 legal conclusion.

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1 A. Here -- that's why I started this discussion by saying
2 to you that calls for a legal could be collusion. In
3 fact, some of those issues are being briefed now.
4 Q. And it's your position that the Michigan legislature
5 does have that authority?
6 A. It's my position that that calls for a legal
7 conclusion.
8 Q. Okay so you won't answer my question?
9 A. No I think it calls for a legal conclusion.
10 Q. That's an objection your counsel can make. I'm asking
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11 you what your view is. I'm entitled to your view
12 whether it's a legal conclusion goes to the weight of
13 it.
14 A. I just gave you my view.
15 Q. Your only view is that it's a legal conclusion?
16 A. No, my view is that the Michigan legislature is
17 presumed to have understood what it was doing when it
18 enacted it.
19 Q. That's not my --
20 A. You're not allowing me to answer.
21 MR. ULLMAN: why don't you read the
22 question again?
23 MR. SHUMAKER: why don't you read the
24 question back?
25 (Record read back as requested.)

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1 Q. That is the authority to allow people acting for the
2 State or the local governmental units to disregard the
3 constitution of the state of Michigan?
4 MR. ULLMAN: Objection, calls for a legal
5 conclusion.
6 A. I would suggest that since these issues are being
7 briefed, my opinion is that I am acting within my
8 authority as Emergency Manager that allows me to
9 abrogate certain provisions which may or may not
10 include the constitution.
11 Q. And I'm simply asking for your understanding as to the
12 question I asked which is whether it is your
13 understanding your understanding and belief that the
14 legislature of Michigan has the power to allow those
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15 acting for the State or the local governments to
16 disregard the Michigan constitution. Your
17 understanding, Mr. Orr.
18 A. I think the legislature might but here again that's a
19 legal conclusion.
20 Q. Now, we have been talking more specifically about
21 Section 24 of Article 9 of the Michigan constitution;
22 is that right?
23 A. Yes.
24 Q. Is there anything in PA 436 that makes specific
25 reference to the Emergency Manager being able to

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1 disregard the strictures of Article 9, Section 24?
2 A. I'm going to say again, within the powers afforded the
Page 126

3 Emergency Manager one of those powers is to abrogate
4 contracts. The Article 9, Section 24 you're speaking
5 to says it's contractual obligation. That's what it
6 said. The reason I'm saying it calls for legal
7 conclusion is because 436 says the Emergency Manager
8 can break contracts and you're talking in Article 9,
9 Section 24 about a contractual obligation. Judges
10 will ultimately have to decide this issue I suppose
11 but the way the statute is written it could be
12 interpreted that way.
13 Q. Are you aware that there are provisions in PA 436 that
14 specifically require the Emergency Manager not to
15 violate Article 9, Section 24, do anything that would
16 diminish pension rights that are protected by that
17 article?
18 A. If you could point me to a specific provision.
Page 127

19 Q. Okay. So you're not aware is your answer?
20 A. No, I'm -- that's why I keep telling you. This area
21 that you're in calls for a legal conclusions that are
22 currently being briefed and quite frankly I'm
23 reluctant to give you a legal conclusion as far as my
24 understanding. My understanding is 436 gives the
25 Emergency Manager certain powers. My understanding is

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1 that the statute that you're talking about Article 9,
2 Section 24 speaks for itself. But amongst those
3 powers in 436 is the ability to breach contracts.
4 Q. Let me ask you this and then we'll move on. Are you
5 aware of any words in PA 436 that specifically
6 authorize are the Emergency Manager to disregard the
Page 128

7 strictures of Article 9, Section 24? I'm asking about
 8 words in hike verbia, I'm not asking interpolations or
 9 extrapolations. I'm asking whether to your knowledge
 10 if there is anything in PA 436 that explicitly says
 11 that.
 12 A. I'm going to stay away from explicitly but I'll try to
 13 answer your question. If your question is is there
 14 anything in 436 that says the Emergency Manager is
 15 exempt from Article 9, Section 24, I've not read that
 16 in the statute. But when you say explicitly as I've
 17 said several times now, those interpretations require
 18 legal conclusions that are in fact being discussed and
 19 briefed as we want so I'm being very careful not to
 20 give an interpretation as the Emergency Manager that's
 21 contrary to what the statute provides. Ultimately I
 22 suspect a jurist will have to resolve that issue.
 Page 129

23 Q. You took an oath of office when you became the
 24 Emergency Manager; did you not?
 25 A. Yes, yes I did.
 75
 uncertified rough draft
 1 Q. And I think these are the words you swore. You said I
 2 do solemnly swear that I will support the constitution
 3 of the United States and the constitution of this
 4 state and that I will faithfully discharge the duties
 5 of the office of Emergency Financial Manager City of
 6 Detroit according to the best of my ability. Do you
 7 remember giving that oath?
 8 A. Yes.
 9 Q. And were you speaking truthfully when you gave that
 10 oath?
 Page 130

11 A. Yes.
 12 Q. And did the oath you give apply equally to how you've
 13 conducted yourself as Emergency Manager when PA 436
 14 became effective?
 15 A. I believe so.
 16 Q. Now, after you became the Emergency Manager, you
 17 certainly specifically considered the question of a
 18 Chapter 9 filing; right?
 19 A. Yes.
 20 Q. Okay. And did you consider specifically the issue of
 21 whether the city had in the course of a Chapter 9
 22 filing the right to seek relief that would adversely
 23 affect pensions that were vested?
 24 A. Yes.
 25 Q. And isn't it correct that the retirement obligations

1 were among the largest obligations that are facing the
 2 City of Detroit?
 3 MR. ULLMAN: Objection, form.
 4 A. Retired -- retired obligations meaning both OPEB and
 5 what we call unfunded pension obligations.
 6 Q. Both I'm asking collectively.
 7 A. Yes they wish's the largest cohort of unsecured
 8 claims.
 9 Q. And at the time that you became the EM, how large did
 10 you understand the un -- I'm sorry?
 11 A. No, I'm just saying at the time it came to me how
 12 large I understand the unfunded amount to be?
 13 Q. The unfunded retirement obligations to both the
 14 pension and what you call OPEB.

15 A. It was unclear because at the time I became Emergency
16 Financial Manager, there were reports issued by the
17 state that put the total debt of the city at 12
18 billion I believe it is, then there were subsequent
19 reports that followed on that and put it at 14
20 billion. So at various times the figure grew.
21 Q. And the two aspect components I've asked about, the
22 pension and the OPEB, those were very large are they
23 not?
24 A. I think they were large. They were in the billions of
25 dollars.

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1 Q. They were in the billions of dollars?
2 A. Yes.

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3 Q. And this were obviously a number of issues but those
4 were among the financial issues that were impediments
5 to Detroit's fiscal health; is that right?
6 A. I believe so.
7 Q. And did the governor share that view with you?
8 A. No.
9 Q. He thought that the pension and OPEB obligations were
10 not impediments to Detroit's fiscal health?
11 A. No, the governor -- the only discussion I had with the
12 governor was at a very high level about the dire
13 straits of the city and the need for some -- it was
14 actually the dire straits of the city and the need for
15 some reform. There was no specific discussion about
16 pension or OPEB.
17 Q. Now, at some point after you became the Emergency
18 Manager, did you have discussions with the governor

Page 134

19 about a Chapter 9 filing to among other things get out
20 of the pension obligations that the city owed?
21 MR. ULLMAN:
22 MR. SHUMAKER: Object to form.
23 A. Yes, I believe so.
24 Q. And when did those take place?
25 A. Since becoming Emergency Manager on the 25th I've had

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1 regular conversations with the governor. Typically
2 weekly. I don't recall the specific conversation when
3 they came up. I will say that it wasn't within our
4 initial conversations.
5 Q. Okay. And we're talking -- these conversations, are
6 we talking about from the time you became the

Page 135

7 Emergency Financial Manager or the EM? In other
8 words, would it be -- are we talking about the early
9 or the late March time frame?
10 A. Yeah, I don't think after the roll out and me becoming
11 effective on the 25th, I think the new statute came
12 into play within days of that. I don't think the
13 governor and I had any discussions from the -- I'm not
14 trying to gap a between EFM and EM.
15 Q. So this would have been within a few weeks?
16 A. Yes.
17 Q. After you became the EM would it be fair to say by
18 then you certainly had the discussions with the
19 governor?
20 A. Yeah but here again they weren't specific discussions
21 about pension and OPEB they were more discussions
22 about getting to what the numbers were and the initial

Page 136

23 processes of getting into the city.

24 Q. Okay. And in the course there were discussions that

25 you indicated about the possibility of filing a

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uncertified rough draft

1 Chapter 9?

2 A. Yes, those discussions came on later.

3 Q. And one of the things the Chapter 9 filing would

4 potentially allow you to do is get out of the pension

5 obligations; is that right?

6 A. Yes.

7 MR. SHUMAKER: Object to form.

8 Q. Now, I take it after you became Emergency Manager you

9 explored what the issues and the options with among

10 other things the pension liabilities that the city

Page 137

11 faced?

12 A. Not -- no, the initial thing we started to do was to

13 try to drill down on the extent of the city's

14 financial obligations.

15 Q. That really wasn't my question, I didn't ask what the

16 first thing you did was so why don't you just read

17 back my question.

18 (Record read back as requested.)

19 A. At some point.

20 Q. And do you recall when -- scratch that.

21 And did you look at various options that

22 were available to you as EM to reduce the pension

23 liabilities that existed for the city?

24 A. Among other things.

25 Q. And did you look at what avenues existed under state

80

Page 138

1 law without recourse to any federal law? In other

2 words, independent of what any federal law might

3 apply, what remedies or relief if any was available

4 under state law only?

5 A. I'm taking my time because I'm trying to remember.

6 There were a number of different analyses and briefing

7 papers and -- that would come across the desk and I'm

8 not sure any of them focused solely on state law.

9 Q. Okay. And what else -- what other law did they focus

10 on if not solely state law?

11 A. They may have focused on state law and federal law.

12 Q. So you don't recall if there was any analysis that

13 just looked at state law?

14 A. No, sitting here today, I don't recall. There may

Page 139

15 have been but I don't recall.

16 Q. And were you aware prior to the bankruptcy filing that

17 under state law alone the pension obligations could

18 not be diminished or impaired?

19 A. This is the discussion we had about five to ten

20 minutes ago about whether or not state law permitted

21 it and I will go back to my answer with that. It

22 seems to suggest a legal conclusion based upon what

23 the statute 436 provides and the intent of the

24 legislature.

25 Q. Let me ask you a different question.

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1 Is there anything in PA 436 that allows in

2 your view the Emergency Manager to impact or adversely

Page 140

3 orrrroughdraft (3).txt
affect pension rights in the absence of a Chapter 9
4 bankruptcy filing?
5 MR. SHUMAKER: Objection, calls for legal
6 conclusion.
7 A. It's the same discussion we had five to ten minutes
8 ago that I want to be very careful with and I don't
9 want to draw legal conclusion that says there's
10 nothing there. It's a discussion we had about 436,
11 the intent of the legislature and Article 9.
12 Q. I'm asking independent of Article 9, Mr. Orr. Please
13 focus on the question.
14 A. I don't -- I don't understand your question because
15 parties can negotiate anything.
16 Q. I'm asking -- okay putting aside negotiation --
17 A. Uh-huh.
18 Q. -- I'm asking apart from the possibility of a Chapter

Page 141

9 orrrroughdraft (3).txt
9 filing, and by the way when we talk about impair or
20 diminish, understand that if the state is impairing or
21 diminishing, it's nonconsensual? Right that's the
22 whole point?
23 A. No, that's -- that's a conclusion that you're making.
24 Parties can agree to I am -- an impaired class can
25 agree to diminish their interests. If you're reading

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uncertified rough draft

1 it that way that says it's nonconsensual, that's a
2 conclusion you're drawing but the language itself.
3 Q. We don't need to get into this.
4 A. Okay.
5 Q. Let's put aside consensual reduction in benefits.
6 A. Okay.

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7 orrrroughdraft (3).txt
Q. Is there anything in PA 436 as you understand it that
8 allows the Emergency Manager without going through a
9 Chapter 9 filing so I'm taking Chapter 9 off the
10 table, okay? Anything in PA 436 without consideration
11 of Chapter 9 that allows the Emergency Manager to
12 reduce or adversely affect pension rights?
13 MR. SHUMAKER: Objection calls for legal
14 conclusion.
15 A. It's the discussion we had a few minutes ago that it
16 might and subject to briefing and a conclusion, the
17 court could conclude that 436 after it was enacted --
18 duly enacted by the legislature intended to have that
19 very result.
20 Q. Can you point to any provision in PA 436 and I can
21 show you the statute if you would like to take a look
22 that specifically says that the Emergency Manager can

Page 143

9 orrrroughdraft (3).txt
23 abrogate or impair pension rights, again without
24 reference to either consensual diminishment or the
25 filing of a Chapter 9 bankruptcy?

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uncertified rough draft

1 MR. SHUMAKER: When you say explicitly do
2 you mean expressly?
3 MR. ULLMAN: Yes, those words.
4 A. We discussed that ten minutes ago.
5 Q. And I never got a straight answer so are you aware of
6 any --
7 A. I'll give you the same answers that I gave then.
8 MR. SHUMAKER: Object to form. Calls for
9 legal conclusion.
10 Q. Why don't we get out the statute. We can take a quick

Page 144

11 look. orrrroughdraft (3).txt
12 MR. SHUMAKER: Sure.
13 Q. I've highlighted some parts but that won't affect
14 anything. You can take a quick look and tell me if
15 there's anything that you can point to that allows the
16 Emergency Manager again this is without the regard to
17 the possibility of a Chapter 9 filing and putting
18 aside consensual diminishment of pension rights that
19 allows the Emergency Manager to abrogate or diminish
20 vested pension rights?
21 MR. SHUMAKER: Objection, calls for legal
22 conclusion.
23 A. We had this discussion a few minutes ago and I'll try
24 to be responsive. I said that within certain
25 provisions of statute you had --

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orrrroughdraft (3).txt

1 Q. Just for the record I see that Mr. Orr has his own
2 copy --
3 A. I do.
4 Q. -- of PA 436 with his own annotations.
5 A. I do.
6 Q. Could we have that introduced as an exhibit?
7 A. No.
8 Q. Well, you're looking at it.
9 A. Well, no, it's confidential. I'll tell you what --
10 MR. ULLMAN: It's not confidential now that
11 he's looked at it as a deposition exhibit.
12 THE WITNESS: No.
13 MR. ULLMAN: Mr. Shumaker, I would request
14 that you please have that marked as a deposition

Page 146

15 exhibit. orrrroughdraft (3).txt
16 THE WITNESS: That has interlineations and
17 comments. It wasn't intended to --
18 MR. ULLMAN: I would like that marked as an
19 exhibit.
20 THE WITNESS: I would say we go to the
21 judge with that. This is my private copy and I was
22 trying to assist you and --
23 MR. SHUMAKER: And it will reflect
24 communications with attorney-client communications.
25 So if you want to ask questions based upon that

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1 exhibit, please do.
2 MR. ULLMAN: Okay, we're reserving our
3 rights to have that document produced to us and so we
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orrrroughdraft (3).txt

4 don't hold up the deposition, I'll show you another
5 copy.
6 THE WITNESS: Okay. I was just trying to
7 help you. Okay. And your question is?
8 Q. Is there anything in PA 436 and putting aside
9 consensual diminishment of pension rights or the
10 possibility of a Chapter 9 filing that allows the
11 Emergency Manager to abrogate or diminish pension
12 rights that are protected by Article 9, Section 24 of
13 the Michigan constitution?
14 MR. SHUMAKER: Objection, calls for legal
15 conclusion.
16 A. I would point out to you and I see you have
17 highlighted in section 12, 1, M, 2, that it says the
18 -- the language speaks for itself. The Emergency

Page 148

orrroughdraft (3).txt
19 Manager shall fully comply with public employee
20 retirement system investment act; okay? And Section
21 24, Article 9 of the state constitution of 1968; okay?
22 But the provision that you were talking to, talking
23 about earlier today, okay, has that constitutional
24 provision. But as I said, and I'll say again, there
25 may be legal reasons, for instance in section 5 where

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uncertified rough draft

1 the legislature specifically talked about pensions;
2 okay? There may be legal arguments that apply here.
3 So rather than draw a legal conclusion I'll say to you
4 again; okay? There may be an explanation for what is
5 provided in the statute subject to a determination by
6 a court. The language of the statute speaks for
7 itself.
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orrroughdraft (3).txt

8 Q. And since it does speak for itself and you have read
9 it, and putting aside -- I understand your position
10 that there may be arguments that can be made, did you
11 see anything in that statute that putting aside
12 Chapter 9 and putting aside the possibility of
13 consensual diminishment states that the Emergency
14 Manager has the authority to diminish or impair
15 pension rights that are protected under Article 9,
16 Section 24?
17 MR. SHUMAKER: Objection, this witness
18 certainly has not had time to review the entire
19 statute as he sits here. You're talking about ever?
20 Q. How many -- how many times have you reviewed the
21 statute, Mr. Orr?
22 A. I don't know. Certainly several dozen.

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orrroughdraft (3).txt
23 Q. Okay. And you have your heavily annotated copy there?
24 A. I have a copy of the statute.
25 Q. So I assume if there were words in the statute that

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uncertified rough draft

1 specifically said yeah the Emergency Manager can
2 violate Article 9, Section 24, you would know where
3 they are wouldn't you?
4 MR. SHUMAKER: Objection to form.
5 A. I don't know if they say violate. But here again I
6 keep saying to you again and again these issues calls
7 for legal conclusions. Statute speaks for itself. I
8 think we discussed earlier today was there anything
9 that expressly said that and we said no but I don't
10 want to be in a position where we foreclose any
11 potential arguments. I'm being very careful.
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orrroughdraft (3).txt

12 Q. In your consideration of the pension issue is it
13 correct that the conclusion that you reach was that
14 one way to get -- for the city to diminish and get out
15 of its pension obligations would be to go through a
16 Chapter 9 filing?
17 A. Could you read the question back?
18 (Record read back as requested.)
19 A. Yes, I think at some point that we reached that
20 conclusion.
21 Q. And do you recall when that conclusion was reached?
22 A. No.
23 Q. Let me show you another document we'll mark this as,
24 what are we up to, 8?
25 A. Uh-huh.

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1 (Marked Exhibit No. 8.)

2 Q. You're familiar with Exhibit 8; aren't you? It's the

3 financial and operating plan of may 12th, 2013?

4 A. Yes.

5 Q. And this is something that you put out; isn't it?

6 A. Yes.

7 Q. And this was after you were Emergency Manager; yeah?

8 A. Yes.

9 Q. Okay. And do you recall giving an interview on radio

10 about the plan?

11 A. I gave many interviews on the radio. Is there a

12 specific one?

13 Q. Yeah, there is. There is one that was made on May

14 12th, 2013 on WWJ and there's one piece of it that I

15 would like to focus on in particular. I'll read it to
Page 153

16 you. I have the article in which it's quoted but

17 maybe you remember saying this.

18 A. Okay.

19 Q. The quotation is -- about this plan, I believe it's

20 this plan, you said the public can comment but it is

21 under the statute, it is my plan and it's within my

22 discretion and obligation to do it. This isn't a

23 plebiscite. We are not like negotiating the terms of

24 the plan. It's what I'm obligated to do.

25 Do you recall making that statement on the

?

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1 radio?

2 A. Yes.

3 Q. And you were talking about the may 12th plan when you
Page 154

4 said that?

5 A. Yes, financial and operating plan.

6 Q. And the may 12th plan referred to the possibility of

7 reducing or eliminating retirement benefits didn't it?

8 A. Yes.

9 Q. And in fact just going through this briefly on pages

10 16 through 17, if I have this right, you're reporting

11 about 5 point billion in unfunded medical costs; is

12 that right?

13 A. Yes.

14 MR. SHUMAKER: Get to the page. I'm sorry

15 what page was that, counsel.

16 MR. ULLMAN: 16.

17 MR. SHUMAKER: 16. At the bottom.

18 A. Yes.

19 Q. Then on the next page you wrote that as part of the
Page 155

20 comprehensive restructuring plan, the Emergency

21 Manager will evaluate options to reduce or eliminate

22 certain healthcare costs for both active and retired

23 employees?

24 A. Yes.

25 Q. And that was a true statement?

?

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1 A. Yes.

2 Q. And then if you turn back a little to page 3 of this

3 document, I think you indicate that the pension

4 liabilities are underfunded by at least 600 million

5 and possibly more, possibly significantly more?

6 MR. SHUMAKER: Can you direct his

7 attention.

Page 156

8 MR. ULLMAN: Yeah it's in the first full
9 paragraph, the last three lines.
10 Q. It says the city's pensions are underfunded by at
11 least 0.6 billion and perhaps significantly more once
12 appropriate actuarial assumptions and current data are
13 considered?
14 A. Yes.
15 Q. And that was as you view that as an accurate statement
16 also; correct?
17 A. Yes.
18 Q. And then if you go to page 20 to 21, beginning on page
19 20 you sort of resummize these obligations, these
20 liabilities and then you make a couple statements on
21 page 21 at the top you say, restructuring the city's
22 liabilities in a fair and equitable manner across all
23 relevant stakeholders is necessary for the city's
Page 157

24 operational and financial survival. Do you see that?
25 A. Yes.
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uncertified rough draft
1 Q. You go on to say that the restructuring of the city's
2 debt and other liabilities is essential to provide the
3 city with a strong balance sheet and it continues. Do
4 you see that? It's kind of in the middle of that top
5 paragraph?
6 A. Yes.
7 Q. And then the next paragraph that says this plan
8 recognizes that interest rates, amortization, it
9 mentions some other things, continues with security
10 interests, legacy liabilities and all other aspects of
11 short and long-term debt must be evaluated as part of
Page 158

12 the city's comprehensive restructuring. It goes on
13 significant and fundamental debt relief must be
14 obtained to allow the city's revitalization to
15 continue and succeed?
16 A. Yes.
17 Q. In all those statements they all applied to
18 obligations that were owed as well to retirees; is
19 that right?
20 A. I believe so. I believe we were talking about we need
21 today do something to address those obligations.
22 Q. And that's what you refer to here as legacy
23 liabilities, the pension and healthcare obligations?
24 A. In part, yes.
25 Q. They're included in legacy liabilities right?

1 A. Yes.
2 Q. And the plan here was, as you're saying here, that the
3 plan is to reduce them; true?
4 A. No, I think what we said here is that they must be
5 adjusted in fair and equitable manner across all
6 stakeholders that would necessarily mean an adjustment
7 yes.
8 Q. In your view didn't that mean they had to be adjusted
9 downwards?
10 A. What we have said and what I said at May 12th and
11 subsequently throughout is we needed -- we needed to
12 have a dialogue about what the status of an adjustment
13 would be because it was clear the city couldn't pay.
14 Q. That's all I'm getting at Mr. Orr. The question was
15 very simple. That what you are saying here is that

16 you needed to get these benefits reduced?

17 A. Yes, that's what I said.

18 Q. And is it correct that under Michigan law, again just
19 under Michigan law without reference to the bankruptcy
20 statute, you didn't have the authority or the ability
21 to reduce pension benefits?

22 MR. SHUMAKER: Objection, calls for legal
23 conclusion.

24 A. This is the same line of inquiry that we've gone
25 through before. I'll state the same response if you

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uncertified rough draft

1 would like.

2 Q. No, I can accept that your response would be the same.

3 A. Okay.

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4 Q. Let me ask you a different question.

5 A. Thank you.

6 Q. Prior to the bankruptcy filing did you identify any
7 course of action under Michigan law, putting aside the
8 possibility of a consensual resolution, that would
9 allow the Emergency Manager to reduce pension benefits
10 without going through Chapter 9.

11 A. Here again, to the did tenth it calls for legal
12 conclusion, my prior answer, but I'll try to be
13 responsive. Yes, we did.

14 Q. And what were those alternatives?

15 A. Well, that's why we continued to say to the various
16 interested groups we needed to engage in a dialogue.

17 Q. I'm saying apart from a consensual resolution.

18 A. Okay.

19 Q. Okay. And what I'm asking is apart from the idea that
Page 162

20 people could get together and agree.

21 A. Uh-huh.

22 Q. Did you come up with any other course of action under
23 Michigan law that did not involve a bankruptcy filing
24 and that would allow the Emergency Manager to reduce
25 pension benefits to retirees?

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uncertified rough draft

1 A. I don't mean to be evasive or tour issue but there
2 were a number of different alternatives that were
3 discussed. Some of them frankly by keeping the city
4 in a steady state would have effectively reduced those
5 pension obligations, yes.

6 Q. So the course that was considered was simply not
7 meeting the pension obligations as they came due; is

Page 163

8 that right?

9 A. No, it's just what I said. By keeping it in a steady
10 state we weren't meeting our obligations there
11 currently.

12 Q. And that would include also not meeting the pension
13 obligations?

14 A. Yes, as I said, keeping in a steady state would by
15 definition reduce liabilities. That's what the city
16 was already doing.

17 Q. And was there any other avenue that was considered as
18 potentially viable to reduce the pension benefits
19 apart from what you just said and apart from going
20 through a Chapter 9 filing and again putting aside
21 some sort of negotiated resolution.

22 A. Well, we didn't consider the steady state alternative
23 viable.

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24 Q. Uh-huh.

25 A. We thought that was quite problematic. Putting aside

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uncertified rough draft

1 the discussion we had earlier this morning about legal
2 conclusions and what we possibly could do under the
3 statute, were there any other, other than consensually
4 inviting resolutions, a potential Chapter 9 filing,
5 any other alternatives? And a steady state, those
6 three, any other? I don't think there were any other
7 alternatives.

8 Q. Okay. Let's move on to the next document, which we'll
9 mark as Exhibit 9.

10 (Marked Exhibit No. 9.)

11 (Discussion held off the record.)

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12 Q. Okay, let's look at Exhibit 9. This is a proposal for
13 creditors, June 14, 2013. You've indicated you're
14 familiar with it?

15 A. Yes.

16 Q. Now, this document as I understand it spells out in
17 general terms what you thought the problems were
18 facing Detroit and what you wanted to do about them?

19 A. Well, it spells out in general terms what we think the
20 problems are and it makes a proposal to what we think
21 we should do about them.

22 Q. Okay. And among the significant issues facing the
23 city were retirement obligations we've discussed
24 right?

25 A. Yes.

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1 Q. And the proposal refers to cutting them; correct?

2 A. Point me to a specific page, please.

3 Q. Doesn't it say that they need to be reduced? Doesn't
4 it say that?

5 A. Yes.

6 Q. And it says they're unsustainable doesn't it?

7 A. Yes I think generally speaking it says that, yes.

8 Q. And we'll go through some of the specifics?

9 A. Okay.

10 Q. I think in here early on around pages 23 to 24 you

11 note -- I think we discussed this a little bit -- that

12 the unfunded pension liability right now as of June

13 14th is more or less on the books as 643 million but

14 it could be as large as 3.5 billion; is that right?

15 A. Yes.

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16 Q. And that figure, that 3.5 billion figure, that's work
17 that's been done for the city by the Millaman firm; is
18 that right?

19 A. Well, among others, I think Millaman worked off an
20 initial Gabriel Rotors projections and then did their
21 own, yes.

22 Q. And are you aware that that number, the 3.5 billion,
23 has been disputed by various parties or objectors as
24 regards the actuarial assumes shops that were used?

25 A. Yes.

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uncertified rough draft

1 Q. And at least one firm has taken the position that the
2 number should be much less than 3.5 billion?

3 A. I think several entities and firms have taken that

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4 orrrroughdraft (3).txt
position yes.

5 Q. And you indicated you're not an actuary; correct?

6 A. That's correct.

7 Q. So you have no expertise in that?

8 A. I rely on our professionals and consultants yes who

9 are actuaries.

10 Q. So the accuracy of the 3.5 billion or some other

11 figure will be an issue that's going to be ultimately

12 decided bay court if this matter proceeds; is that

13 right?

14 A. We think it's accurate but it may ultimately be

15 decided by a court.

16 Q. Now, on pages 90 to 91, if I understand this, and

17 particularly on 91, this is showing the current

18 projections; right, as I understand this particular

19 schedule?

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orrrroughdraft (3).txt

20 A. Yes it's the ten year projections.

21 Q. Right under what I think has been referred to as a

22 steady state? In other words this is without the

23 restructuring?

24 A. Yes, I think this is the ten year steady state general

25 fund only projection.

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uncertified rough draft

1 Q. If you look at page 91 it shows if nothing changes

2 projections for both pension, contributions and

3 healthcare benefits, right, and then the top headings?

4 A. Yes.

5 Q. And for pensions just using 2014 as an example we see

6 the number is 199.5 million?

7 A. Yes.

Page 170

8 orrrroughdraft (3).txt
Q. And for the health benefits for 2014 it's 140.7

9 million?

10 A. Yes.

11 Q. And obviously if you look over the next several years

12 it goes up?

13 A. Yes.

14 Q. Okay. And then so that I understand this, if you look

15 at pages 97 to 98, this is the same spreadsheet but

16 now showing what the figures would look like if this

17 proposal for restructuring were to go through; is that

18 right?

19 A. Yes.

20 Q. And so if we look again comparably for 2014, let's

21 see, and let's start with -- I guess we can start with

22 the pensions. On page 97, for 2014, we now see an

23 item DC pension contribution.

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orrrroughdraft (3).txt

24 A. Uh-huh.

25 Q. And that's -- that DC stands for what?

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1 A. You mean the DC?

2 Q. Yeah what do the words stand for.

3 A. Defined contribution.

4 Q. Defined contribution?

5 A. Uh-huh.

6 Q. Now, the existing -- the pension plan that exists

7 under the steady state projections, is that defined

8 contribution plan?

9 A. That would be switched over. No, no, defined -- the

10 steady state scenario?

11 Q. That's a defined benefit?

Page 172

12 A. That's a defined benefit plan. orrrroughdraft (3).txt

13 Q. So what you're projecting here is a switch over to a
14 defined contribution program and for 2014 we see the
15 number for the city's contributions is now 25.4
16 million; is that right?

17 A. Yes, that's -- yes.

18 Q. And that compares with the -- what was the figure?
19 199.5 million that we saw under the as is?

20 A. Yes, projections.

21 Q. Yes. So the diminution it looks just on the rough
22 math that the city's pension contributions under the
23 restructuring are being cut by about 80 percent is
24 that right?

25 A. Under 75 million, 80 percent, sure, roughly.

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uncertified rough draft

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orrrroughdraft (3).txt

1 Q. And for health, the health benefits, which we saw that
2 were what under the current scenario something like
3 147 million?

4 A. Retiree health, yes.

5 Q. For retiree health?

6 A. Uh-huh.

7 Q. Under this proposal, the restructuring proposal, I
8 don't see any line entry for the retiree health
9 benefits.

10 A. Yes.

11 Q. So they're essentially being cut; correct?

12 A. Well, the obligation is being provided with a
13 different program, but yes, the city would not have an
14 obligation going forward of that magnitude.

15 Q. And going back to the pension contributions, you know,

Page 174

16 we had talked about a diminution on the order of 80
17 percent from the 199.5 figure, and I think it's the
18 city's contention that the 199.5 figure is really
19 understated right because the obligations are really a
20 lot higher?

21 A. I think we think the liabilities -- this is the steady
22 state projection on 91, I think we think the
23 liabilities are higher because what we represented on
24 the second page of 98 is the estimated under secured
25 claims for out years as opposed to a ten year

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uncertified rough draft

1 projection.

2 Q. Right and if the liabilities were really greater than
3 the diminution from the steady state to the
4 restructuring scenario would be greater than 80
Page 175

orrrroughdraft (3).txt

5 percent wouldn't it?

6 A. It might be. I mean, we have we've said 80 percent.

7 I mean 199.5 less 25, you know, you just roughly cut
8 those in half, that's a 12 and a half percent but 788
9 percent, somewhere in that neighborhood.

10 Q. Now, the people who are -- the retirees who are
11 getting impacted from these -- by these cuts in the
12 proposed restructuring, these are who? These are men
13 and women who previously serve the city and are now
14 retired?

15 A. Yeah they're two pension plans, one for general
16 services and the other for police and fire.

17 Q. And these individuals that serve the city in both
18 public safety and nonpublic safety capacities?

19 A. Uniform and nonuniform, yes.

Page 176

orrroughdraft (3).txt
20 Q. And were these -- I guess the issue comes because the
21 pension liabilities and the healthcare benefits that
22 may be due are not -- there's not sufficient funding
23 that was put into them; correct?
24 A. well, the healthcare benefit has no funding. The 5.7
25 billion dollars. And the pension underfunding is our
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uncertified rough draft

1 estimate of the level of underfunding, the unfunded
2 portion of the pensions, in them. There are assets
3 within both pension funds, it's the level of
4 underfunding that we're talking to.
5 Q. Right and it's the underfunding that's resulting in
6 the cuts to the retirees; correct?
7 A. well, this is a proposal I'll say again. We have said
8 again and again we want to have a discussion so we can
Page 177

orrroughdraft (3).txt

9 figure out what the right-sizing is.
10 Q. Can you please just answer the question Mr. Orr?
11 A. I am but you say cuts, you say cuts and that has a
12 different connotation and I'm trying to explain it
13 fully.
14 Q. This proposal the benefits get cut substantially don't
15 they?
16 A. Yes, but we need to have a discussion.
17 Q. Now, the individuals whose rights and expectations and
18 benefits are being impacted under this, they weren't
19 themselves responsible for the lack of funding that's
20 resulted in these problems are were they?
21 MR. SHUMAKER: Objection form foundation.
22 A. That's -- that's a loaded question about
23 responsibility and --

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orrroughdraft (3).txt
24 Q. I'm ask if the individual retirees whose pensions and
25 healthcare benefits may be impacted under this.
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uncertified rough draft
1 A. That's a loaded question.
2 MR. SHUMAKER: Same objection.
3 A. I'm going to be very careful here because while
4 recognizing that these are typically rank and file
5 employees, there's a whole bunch of issues regarding
6 responsibility and some of it has been written about
7 quite extensively.
8 Q. And you're aware that at least the vast majority of
9 the city employees, the retirees, count on their
10 pension and healthcare benefits in order to help make
11 ends meet?
12 A. I don't know if I'm aware of that as a fact. I know
Page 179

orrroughdraft (3).txt

13 certainly that pensions are important to retirees.
14 Q. Now, going back to page 98 of this restructuring
15 proposal, you pointed to a box.
16 A. Yes.
17 Q. -- that shows a very large unsecured claim amount for
18 unsecured pension and OPEB?
19 A. Yes.
20 Q. And that's 9.2 billion?
21 A. Yes.
22 Q. And as I understand this proposal, the retirees who
23 fall into this category whose pensions and healthcare
24 benefits are being cut back by this would end up with
25 unsecured claims and get a share of the notes that the

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1 city is intended to issue; is that right?

2 A. The retirees whose pensions and healthcare benefits we

3 propose to reduce would get a share of the note, yes.

4 Q. And is there any way to tell from this document how

5 much any individual retiree would ultimately get if

6 the notes go ahead and are issued?

7 A. Not from this document.

8 Q. There's no way to tell how much cash value any retiree

9 would receive under this plan that's laid out here

10 where they get notes?

11 A. It is my understanding that there are a number of

12 different plans and benefits and factors that go into

13 that determination for any specific retiree.

14 Q. Okay. Now, Chapter 9 is not referred to in this

15 restructuring plan; is it?

16 A. I don't think we did.
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17 Q. And I think you indicated before that if this was not

18 agreed to by the various constituencies, then the only

19 way to implement this restructuring plan would be, if

20 at all, would be to try to go ahead and do that

21 through Chapter 9; is that right?

22 A. I think what I said before, I think you're referring

23 to the May 12th, 45-day operating plan, but I think

24 what I said before on June 10th and June 14th is we

25 needed to engage in a dialogue because we didn't want

♀

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uncertified rough draft

1 to go to Chapter 9.

2 Q. That wasn't my question. Can you read my question

3 back?

4 (Record read back as requested.)
Page 182

5 A. Yeah, I indicated that here today.

6 Q. I'll just ask the question again. As you understood

7 it, if the proposal here were not agreed to or some

8 other consensual resolution was not reached, was there

9 anyway for you as Emergency Manager to implement this

10 plan other than to try to get it put in place through

11 a Chapter 9 filing?

12 A. Subject to the discussion that we've had a couple of

13 times earlier today, what I have said is that Chapter

14 9 is an option to achieve these goals.

15 Q. And were you at this point aware of any option to

16 achieve these goals other than Chapter 9 if a

17 consensual resolution was not reached?

18 A. There were various briefing memos and discussions, but

19 given the time frames that we were under, and I said

20 this at the June 10th meeting and I said it at the
Page 183

21 June 14th meeting and I want to be responsive, that if

22 we didn't, Chapter 9 was an alternative.

23 Q. And I don't think that's fully responsive at this

24 point. Had you identified anything else as of June 14

25 to get this plan implemented, any other course,

♀

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uncertified rough draft

1 putting aside consensual resolution, other than a

2 chapter 9 file?

3 A. Nothing that would give us an orderly and

4 comprehensive resolution of these problems.

5 Q. Now, you gave an interview that I'm sure you're

6 familiar with with the Detroit Free Press on or around

7 June 14th. Do you remember it? I'll just tell you

8 what -- I believe you said and I'm sure you remember
Page 184

9 this one and you can tell me. If not, I have the
10 quote.
11 A. Yeah, you can give me the quote. There's so many
12 interviews, but I'll trust your quote.
13 Q. Okay.
14 A. Okay.
15 Q. This is the quotation. Question, you said in this
16 report, referring to the June 14th proposal, that you
17 don't believe there is an obligation under our state
18 constitution to pay pensions if the city can't afford
19 it? Answer, the reason we said it that way is to
20 quantify the bankruptcy question. We think federal
21 supremacy trumps state law?
22 A. Yes.
23 Q. You don't deny making that statement?
24 A. No, I think I've said that several times.
Page 185

25 Q. And the state law you were referring to that you
uncertified rough draft
1 referred to as being trumped was Article 9, Section 24
2 of the state constitution; is that right?
3 A. I believe so.
4 Q. There's no other state law that you view as relevant
5 to the pension issue is there?
6 A. Subject to the discussions that we had earlier today.
7 Q. As being trumped? There's no other state law that you
8 regarded as being trumped; is there?
9 A. No, there is a no other as being trumped?
10 Q. Trumped.
11 A. Right.
12 Q. So the answer to my question, so the record is clear,
Page 186

13 the answer to my question is no other?
14 A. We're not referring to another state law.
15 Q. Okay, thank you.
16 A. Okay.
17 Q. Now, ultimately -- so when the subsequent bankruptcy
18 filing was made -- which it was; right?
19 A. Yes.
20 Q. The intention -- specific intention was indeed to
21 trump Article 9, Section 24 of the state constitution;
22 correct?
23 A. That wasn't the only intention.
24 Q. But that was an intention was it not?
25 A. That was one of the objectives.

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uncertified rough draft

1 Q. Now, ultimately you did request authorization for the
2 governor to file; right?
3 A. Yes.
4 Q. I'm just going to put these letters into the record so
5 we have them.
6 A. Okay.
7 Q. I'm not sure I'm going to ask you much about them.
8 The first one is what we're going to mark
9 as Exhibit 10.
10 (Marked Exhibit No. 10.)
11 Q. This is 10. This is 10.
12 A. Thank you.
13 MR. ULLMAN: And I might as well mark 11
14 also. They kind of go together.
15 THE WITNESS: Okay.
16 (Marked Exhibit No. 11.)

17 Q. Okay, what we've marked as Exhibits 10 and 11
18 respectively are the July 16th, 2013 letter from you
19 to the governor and to the treasurer and then the
20 governor's response letter of July 18, 2013.
21 A. Yes.
22 Q. And you're obviously familiar with these documents?
23 A. Yes.
24 Q. And you wrote Exhibit 10, you signed it at least?
25 A. Yes.

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1 Q. And Exhibit 11 is the governor's response; correct?
2 A. Yes.
3 Q. Now, did you have discussions with the governor's
4 office or anyone on governor's team leading up to the

Page 189

5 request letter that you sent in?

6 MR. SHUMAKER: Objection to form.

7 A. Leading up to?

8 Q. Yeah, before.

9 A. Before that. I think there were discussions with the
10 treasurer and even the governor that if we weren't
11 making progress on negotiations, I might have to
12 submit the letter.

13 Q. Okay. And in those conversations was there any
14 mention of the impact that the bankruptcy filing might
15 have or was intended to have as regards the pension
16 benefits?

17 A. Probably, yes.

18 Q. And do you recall anything specific about that?

19 A. I -- um -- as I said, I had regular meetings of the
20 governor and his staff, we probably discussed this. I

Page 190

21 don't recall a specific discussion.
22 Q. Do you recall telling the governor and his staff in
23 general that one of the purposes, I'm not saying the
24 only purpose, one of the purposes or intentions of the
25 Chapter 9 filing would be to allow you to cut back the

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uncertified rough draft

1 pension benefits?

2 A. Yeah, I don't want to give the misimpression that that
3 was the singular focus. I think most of our
4 discussions were about the need for the city to deal
5 overall with its balance sheet and its obligations
6 which would include pensions.

7 Q. Uh-huh. Okay can you read my question back? Listen a
8 little more closely because I was really -- it was a

Page 191

9 little more specific of a question.

10 A. Okay.

11 (Record read back as requested.)

12 A. We probably had that discussion. I don't recall
13 anything specific but we probably did.

14 Q. And do you recall any discussion during those same
15 conversations with the governor or anyone from his
16 staff as to the impact if any of Article 9 chapter --
17 Section 24 of the Michigan constitution as regards
18 pension benefits?

19 A. I don't recall having discussions in that regard. No.

20 Q. Now, if you look at the governor's response letter,
21 okay, and the last page, you see at the top there's a
22 heading called contingencies?

23 A. Yes.

24 Q. And it says 2012 PA 436 provides that my approval of

Page 192

25 the recommendation to commence a Chapter 9 proceeding

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uncertified rough draft

1 may place contingencies on such a filing and it gives

2 the citation, it continues, I am choosing not to

3 impose any such contingencies today. Federal law

4 already contains the most important contingency, a

5 requirement that the plan be legally executable, 11

6 U.S.C. section 943(b)(4); do you see that?

7 A. Yes.

8 Q. And did you have any discussions with the governor or

9 anyone from his staff about that language before you

10 received this letter back?

11 A. No.

12 Q. Were you -- did you have any understanding before

Page 193

13 receiving this that as to whether or not the governor

14 was going to place any contingencies on the bankruptcy

15 filing?

16 A. No, but I was concerned about it.

17 Q. And what were you concerned about?

18 A. I was concerned that the governor might place some

19 contingency in any regards not just related to the

20 pensions and others but that the inner lay on limiting

21 what authority I might have would impact what

22 discretion I would have under either 436 or Chapter 9.

23 I was just concerned about contingencies.

24 Q. And was one of the contingencies that you were

25 concerned about the contingency that could impair your

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1 ability or restrict your ability to cut back the

2 pensions.

3 A. I was concerned about all contingencies. I didn't

4 know what the governor was going to say.

5 Q. That's really not my question. Can you read my

6 question?

7 A. Yes I was concerned about all of them. That's what I

8 said.

9 Q. And that includes specifically the one about not being

10 able to effect the pensions; correct?

11 A. All contingencies.

12 Q. Thank you.

13 Had you discussed within your staff the

14 possibility of the governor putting a contingency that

15 would prohibit the Emergency Manager from taking

16 actions that would impair pensions?

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17 A. My staff including my legal counsel and consultants,

18 the entirety of staff at large?

19 Q. Yes.

20 A. Yes.

21 Q. And did you view the risk as substantial, that the

22 governor was going to do that?

23 A. Without disclosing any attorney-client confidences, I

24 don't know if we handicapped the risk. It was just a

25 general discussion. I had submitted a letter, I

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uncertified rough draft

1 wasn't sure what I was going to get back.

2 Q. And did you have any plan in place as to what you

3 would do if the letter came back that imposed a

4 contingency that in any Chapter 9 filing nothing could

Page 196

5 orrrroughdraft (3).txt
be done that would affect pension rights that were
6 protected under the Michigan constitution?
7 A. No.
8 Q. Now, in his letter the governor -- the portion we've
9 just looked at on the back of page 5, the governor
10 says having a legally executable planned under section
11 943(b)(4), that's the bankruptcy code; isn't it?
12 A. I believe so.
13 Q. So he says, he the governor says, having a legally
14 executable plan under section 943(b)(4) of the
15 bankruptcy code is a contingency for Detroit's filing
16 a bankruptcy petition; correct?
17 MR. SHUMAKER: Objection, document speaks
18 for itself.
19 A. That's -- I was going to say the document speaks for
20 itself. You're sort of reading it, you know, just

Page 197

21 orrrroughdraft (3).txt
inversing it, but it says federal law already contains
22 the most important contingency requirement that the
23 plan is legally executable.
24 Q. Right. And this is in the context of him asking or
25 noting that under PA 436 he, the governor, could place
¶
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uncertified rough draft
1 contingencies on a Chapter 9 filing; right?
2 A. Yes.
3 Q. And he goes on to say that federal law also contains
4 what he calls the most important contingency on the
5 Chapter 9 filing, that it be legally executable;
6 correct?
7 A. Yes, the letter speaks -- that's the language of the
8 letter.

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9 orrrroughdraft (3).txt
Q. Did you agree with the governor's analysis here?
10 A. I -- do I agree? Yes, I mean, I agree that that's the
11 most important contingency that we get to, yes.
12 Q. Now, petition was filed -- the bankruptcy petition was
13 filed on July 18th, like at 4 in the afternoon, 4:05,
14 something like that?
15 A. That's what I was told. I don't know the specific
16 time.
17 Q. Now, in doing -- in making your bankruptcy filing,
18 were you intending to do something that was in
19 violation of state law?
20 MR. SHUMAKER: Objection, calls for legal
21 conclusion.
22 A. Here again, subject to all the discussions that we had
23 earlier today, I was intending to alevé the city of a
24 very dire situation and provide it with the maximum

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25 orrrroughdraft (3).txt
ability to restructure itself.
¶
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uncertified rough draft
1 MR. ULLMAN: I'm going to move to strike as
2 nonresponsive. Can you read back my question, please,
3 and can you answer it, Mr. Orr?
4 (Record read back as requested.)
5 A. No.
6 Q. And at this time were you aware that a bankruptcy
7 filing that would allow you to impair pension benefits
8 was at least arguably in violation of state law?
9 A. I was aware that various parties had taken that
10 position, yes.
11 Q. So you were aware there was an argument? I'm not
12 saying you were agreeing with it.

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13 A. I didn't agree with it but there was an argument.
14 Q. Now, did you give consideration to that argument?
15 A. Yes, I suppose I did.
16 Q. And what did you do to give consideration to that
17 argument?
18 A. I discussed it with counsel.
19 Q. Okay, which counsel?
20 A. My legal counsel.
21 Q. Legal counsel being?
22 A. Jones Day.
23 Q. Jones Day.
24 A. Uh-huh.
25 Q. Did you make any inquiries of the State Attorney

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1 General? Page 201

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orrroughdraft (3).txt

2 A. I know at some point -- and I'm going to be careful
3 here because as a state contractor I want to be very
4 careful about whether or not the Attorney General also
5 is my counsel. I know at some point met with the
6 Attorney General but I don't recall when that was. I
7 don't recall if it was before or it was after the
8 filing. It might have been before.
9 Q. Okay. Well, if it was before do you recall what
10 advice you got from the state Attorney General as to
11 whether it was legal under Michigan law for you to go
12 ahead with the bankruptcy filing but didn't protect
13 the pensions?
14 MR. SHUMAKER: Objection. I caution the
15 witness that to the extent it calls for
16 attorney-client communication, not to reveal those

Page 202

17 orrrroughdraft (3).txt
communications.
18 A. I don't think I can answer the question without going
19 into attorney-client communications.
20 Q. But you don't recall specifically whether you actually
21 consulted the State Attorney General prior to the
22 filing; do you?
23 A. I recall meeting with the Attorney General at one -- I
24 may have had a couple -- I think I've had a couple of
25 telephone conversations with him and I recall meeting

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1 with him. I don't recall whether it was prior or
2 after the filing. I know from time to time -- I just
3 don't recall when it was.
4 Q. Would there have been any reason for you not to
5 consult the Attorney General prior to the bankruptcy
Page 203

orrroughdraft (3).txt

6 filing on that issue?
7 A. No, I think the state Attorney General made his
8 position known prior to the filing.
9 Q. Now, as of this time the petition was filed there were
10 various state court litigations that had been begun?
11 A. Yes.
12 Q. And those challenged among other things PA 436;
13 correct?
14 A. Yes.
15 Q. And its constitutionality?
16 A. Yes.
17 Q. And in fact the petition was filed just prior to the
18 start of a TRO. Hearing in one of those state
19 litigations; wasn't it?
20 A. I was told that either that night or the following

Page 204

21 day. orrrroughdraft (3).txt
22 Q. And are you aware that certain objectors in this
23 proceeding have stated that the bankruptcy petition
24 was filed just before the judge in the case was about
25 to issue a TRO prohibiting the bankruptcy filing from

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uncertified rough draft

1 taking place?

2 A. I heard that after the fact, yes.

3 Q. And are you aware that these objectors have stated
4 that in fact the state lawyers asked for a short delay
5 before the ruling was issued so they could get the
6 bankruptcy filing in before the judge came down with a
7 TRO?

8 A. I don't know if I heard it -- I may have read that
9 later. I don't know if I heard it.
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orrrroughdraft (3).txt

10 Q. Did you have any involvement in those actions?

11 A. No, no.

12 Q. Do you deny that that's what occurred?

13 A. I only know what I've heard and I have no personal
14 knowledge I just know what I've heard and what I've
15 read.

16 Q. And isn't it correct that you wanted to get the
17 bankruptcy petition filed as soon as possible because
18 you knew there was a risk that the state might rule it
19 was illegal the state court might rule it was illegal
20 under state law for the bankruptcy proceeding to be
21 filed?

22 A. No, that wasn't the reason.

23 Q. Is there a particular reason that the bankruptcy
24 filing was made at 4:06 in the afternoon of the same

Page 206

25 orrrroughdraft (3).txt
day a TRO was being heard in the state court other

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uncertified rough draft

1 than to get the jump on the state court ruling?

2 MR. SHUMAKER: Object to the form.

3 A. Not to the best of my knowledge.

4 Q. Now, you're aware that the state court in that
5 litigation in fact later issued a ruling that PA 436
6 is unconstitutional to the extent that it authorizes a
7 proceeding under Chapter 9 in the way that could
8 threaten to impair or diminish accrued pension
9 benefits?

10 A. Yes, I was informed that there are I believe three
11 TROs after the bankruptcy filing.

12 Q. And you have proceeded with the bankruptcy petition
13 notwithstanding; correct?
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orrrroughdraft (3).txt

14 A. Well, the bankruptcy petition had been filed, there
15 were open questions about the application of the stay.
16 There was also a question about an appeal, which was
17 taken up I believe by the Attorney General's office.
18 So when you say you proceeded with the petition, we
19 filed the petition, there was a ruling, and there were
20 appeals.

21 Q. Okay. And in light of the state court ruling that PA
22 436 was unconstitutional, you did not take any steps
23 to withdraw the bankruptcy petition from filing; did
24 you?

25 A. No.

uncertified rough draft

1 Q. And you have not taken any steps to stop the
Page 208

2 bankruptcy proceeding from going forward; have you?

3 A. No.

4 Q. would this be a good time to stop for lunch, a quick

5 lunch?

6 MR. SHUMAKER: Sure.

7 MR. ULLMAN: I'm ready to continue but I

8 know --

9 THE WITNESS: You got another -- how much

10 -- do you have another line of inquiry? whatever

11 everybody --

12 MR. ULLMAN: I'm about to switch subject

13 matters.

14 THE VIDEOGRAPHER: Going off the record at

15 12:52 p.m.

16 (Luncheon recess between

17 12:52 p.m. and 1:30 p.m.)
Page 209

18 THE VIDEOGRAPHER: we're back on the record

19 at 1:35 p.m.

20 MR. ULLMAN:

21 Q. welcome back, Mr. Orr.

22 A. Good afternoon.

23 Q. One other question about the June 14th proposal.

24 Referring to page 98, we talked about the defined

25 contribution benefit plan?

♀

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1 A. Yes.

2 Q. Okay. Is it correct that under that plan

3 contributions are being made only for people who would

4 be current city employees?

5 A. Will the plan be closed?
Page 210

6 Q. Yes.

7 A. Yes, I believe so.

8 Q. So under the restructuring plan there would be no

9 pension contributions made for retirees; correct?

10 A. I believe that's correct.

11 Q. Now, you I believe said that the June 14th proposal

12 was presented at a meeting to representatives of

13 various creditors, I think you said that in your

14 declaration?

15 A. On June 14th, yes.

16 Q. Okay. Did you speak at that meeting?

17 A. Yes.

18 Q. And who else spoke?

19 A. I believe all -- several members of our team, I

20 believe it was Mr. Heiman, David Heiman, I believe it

21 was Ken Buckfire, I believe Heather Lennox was on, I
Page 211

22 believe Bruce Bennett was there, I believe Ken

23 Buckfire may have spoken. I'm trying to recall if

24 there was anyone else.

25 Q. And this meeting took about two hours total; is that

♀

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1 right?

2 A. Approximately that time.

3 Q. And you indicated in your -- the declaration that you

4 filed here that at the June 14th meeting you presented

5 the proposal and you presented the executive summary

6 and people got the full proposal as they exited and I

7 think you said that you answered questions posed by

8 the attendees?

9 A. I believe that's correct.
Page 212

10 Q. Is that an accurate and truthful description of what
 11 happened at the June 14th meeting?
 12 A. Yes.
 13 Q. There were no actual negotiations at that meeting;
 14 were they?
 15 A. I don't -- be careful of the word negotiations but no
 16 not as it's generally understood.
 17 Q. Now, the next meeting that I believe took place was on
 18 June 20; is that right?
 19 A. Are you reading through my declaration?
 20 Q. Uh-huh.
 21 A. Page 55 has a list of meetings, around that
 22 approximate time.
 23 Q. Uh-huh.
 24 A. Okay yes.
 25 Q. So the next one was June 20; is that right?
 Page 213

uncertified rough draft

1 A. If that's what it says in my declaration, yes.
 2 Q. And there were both morning and afternoon sessions; is
 3 that right?
 4 A. Yes.
 5 Q. And this was six days after the proposal had been
 6 presented; correct?
 7 A. Yeah, I haven't done the counting but 14th to 20th,
 8 yeah, it would be six calendar days, yes.
 9 Q. And it was a 2-hour morning session and about 90
 10 minutes for the afternoon session?
 11 A. That sounds about right.
 12 Q. And in your affidavit or your declaration you
 13 indicated that at this meeting, these meetings, the
 Page 214

14 city presented a more in-depth look at its analysis of
 15 the health and pension obligations and suggested for
 16 proposals -- suggested proposals for the modification
 17 thereof that the city could fund within its means
 18 going forward and you provided handouts of the
 19 presentations. Are those accurate descriptions of
 20 what?
 21 A. Yes.
 22 Q. So there were no actual negotiations at that meeting
 23 either; were there?
 24 A. I'm going to defer as to whether or not those
 25 constitute negotiations. There was a give and take is

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1 my understanding but I'm not going to testify that
 Page 215

2 those did not constitute negotiations.
 3 Q. Well, was there any actual sit down, you know, and
 4 bargaining as to what the city would agree to as an
 5 alternative to what was put in the June 4th proposal
 6 and what it would not?
 7 A. Here again, let me be careful here. The obligation to
 8 collectively bargain is suspended for five years so I
 9 just want to state that for the record. We are not in
 10 any way by answering this question seeking to waive
 11 that right. As it is traditionally understood. That
 12 being said, I think at those meetings and all the
 13 meetings I've referenced we generally asked during
 14 those meetings for proposals which could be
 15 characterized as negotiations.
 16 Q. Did the city make any counterproposals to the June
 17 14th proposal at the June 20 meetings?
 Page 216

orrroughdraft (3).txt

18 A. Well we wouldn't bargain against ourselves.

19 Q. It's a yes or no question okay?

20 A. Sir throughout the day I'm trying to give you a

21 response. I know you want yes or no questions for

22 purposes of your briefing, I suppose, but I'm trying

23 to give you an accurate response.

24 Q. I would appreciate it if you could answer the question

25 without making speeches.

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uncertified rough draft

1 MR. ULLMAN: Can you have the question

2 read back, please?

3 THE WITNESS: It's not speeches, it's a

4 response.

5 MR. ULLMAN: Question read back.

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orrroughdraft (3).txt
(Record read back as requested.)

6

7 MR. SHUMAKER: Object to the form.

8 A. We didn't receive any counterproposals so there was

9 nothing to counter.

10 Q. And did you make any further mod -- did you make any

11 modifications on June 20 to the proposal you had made

12 on June 14th?

13 A. Here again I'm going to be careful as to whether or

14 not what we discussed at 20 referred to modifications

15 but suffice it to say we went over in detail as I said

16 in my declaration our proposal on the 14th and asked

17 for responses.

18 Q. Okay. The next meeting I believe took place in July;

19 is that right? July 10th and 11th?

20 A. Yes, here again, if you're reading my declaration,

21 that's what I state.

Page 218

orrroughdraft (3).txt

22 Q. Now, in this set of meetings there were -- first of

23 all, were you present there?

24 A. I don't -- I don't recall which of those meetings. I

25 know I attended the 14th in person, I had my June 10th

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1 meeting in person, and I know I attended one or some

2 of these other meetings but I don't recall if I was

3 present at that meeting.

4 Q. Okay. So I take it then that you have no personal

5 recollection as you sit here now as to what happened

6 at those meetings?

7 A. No, only as reported to me by my staff or consultants.

8 Q. Okay. And so what is set out in your declaration that

9 you filed in the bankruptcy case regarding the July

Page 219

orrroughdraft (3).txt

10 10th and 11 meetings is essentially a recitation of

11 facts that were reported to you by others?

12 A. Yeah, my information and belief, yes.

13 Q. And so far as you were aware, the description of the

14 meetings that you put in your declaration were full

15 and complete and accurate?

16 MR. SHUMAKER: Object to the form.

17 A. Yes.

18 Q. And we're talking about the meetings for July 10th and

19 11th just to be clear?

20 A. Yes.

21 Q. Okay.

22 MR. ULLMAN: I'm going to show you a

23 document that we will mark as.

24 THE COURT REPORTER: 11. Excuse me 12.

25 THE WITNESS: 12.

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MR. ULLMAN: -- 12.

(Marked Exhibit No. 12.)

Q. Exhibit 12 is a letter on the letterhead of the
Detroit Firefighters Association dated July 12, 2003
(sic) to Evan Miller and David Heiman of Jones Day?

A. Yes.

Q. Are you familiar with this letter?

A. I've seen this letter before, yes.

Q. Okay. And in this letter the authors refer to the
July 10 meeting and say that in the third paragraph
you stated you wish to discuss pension restructuring
proposals, you were then asked by the DPOA president,
Mark Diaz, for specific city pension restructuring

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proposals -- I'm sorry, I think I omitted benefit for

specific city benefit restructuring proposals. You

declined to give any specific proposals.

As far as you're aware, is that an accurate

statement?

A. Yes.

Q. And they go on to say we are reviewing and will

provide the city with specific proposals. As of this

time has the city received any specific proposals from

any of the potentially interested parties?

A. Not to the best of my knowledge.

Q. And the authors go on to say it would be productive if

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the city could provide us with its specific proposals

Page 222

on pension benefit restructuring as soon as possible.

We have had only two meetings -- I'm sorry, we have

had two meetings where the similar pension benefits

were addressed and still have only the general

observation that pension benefits must be reduced.

Is that a fair characterization as to the status as of

July 12th?

A. Well, I'm assuming that it's fair to say there were

two meetings. I'm not sure that they have city's

general observation. My understanding was that there

were discussions besides the meetings and follow-up

regarding pension benefits but that's not best of my

knowledge.

Q. And they go on to say sufficient we hope sufficiently

provide to our next meeting the city will provide us

with specific propose allegation on pension benefits

Page 223

structuring so there can be genuine, good faith

negotiation on the city's debt?

A. Yes, I see that.

Q. And I think you indicated at this time the city had

not provided any specific proposals to these

gentlemen?

A. No. No no that's not what I indicated.

Q. Okay.

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A. No, I think we did provide a proposal on June 14th and

I think the testimony was that we flushed those out

subsequently.

Q. So the only proposal that had been provided so far is

a proposal on June 14th and nothing beyond that?

Page 224

orrroughdraft (3).txt
MR. SHUMAKER: Object to the form.

6
7 A. No, I think we said that there were other discussions
8 in fact you said based upon my declaration that there
9 were further discussions that followed up after June
10 14th.

11 Q. Maybe I was unclear in my question.

12 A. Okay.

13 Q. There were no proposals that had been put out by the
14 city subsequent to the June 14th proposal; correct?

15 A. I guess someone was on call. Are we okay?

16 No proposals put out by -- well, you keep
17 saying proposals. There's nothing as comprehensive
18 that was proposed as we put on June 14th. There was
19 additional data and additional information that was
20 provided after June 14th.

21 Q. So we're clear no additional proposals that provided

Page 225

orrroughdraft (3).txt
22 for the pension cuts or the health benefit cuts in a
23 way that was different from what was in substance set
24 out on June 14?

25 A. Well, you say what was different.

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1 Q. You haven't change what was set out in the June 14th
2 proposal have you?

3 A. You're not letting me respond. Can I respond?

4 Q. Let me withdraw the question.

5 A. Okay.

6 Q. Had there been any modify cage to the June 14 proposal
7 as of July 12, 2003 -- 13.

MR. SHUMAKER: Object to the form.

9 A. There could have been discussions that could qualify

Page 226

orrroughdraft (3).txt
10 as modifications, but generally speaking, the broad
11 outline of the proposal we submitted on June 14th was
12 still the proposal that we were talking about.

13 Q. Okay, and what were the discussions that you were
14 referring to that you said could qualify as
15 modifications?

16 A. Discussions we had with all members at the due
17 diligence follow-up sessions where we requested their
18 input.

19 Q. And was there any bargaining that took place at those
20 sessions where the city said it would be willing to
21 agree to something that was different from what was in
22 June 14?

23 A. Here again, I'm going to stay away from bargaining as
24 a legal conclusion, duty to bargain is suspended. I
25 will say there was a back and forth and my

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orrroughdraft (3).txt

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1 understanding discussions and invitations for further
2 information.

3 Q. Thank you. I'm going to show you the next document
4 which is a response to the one that we have as Exhibit
5 12 which we'll mark as Exhibit 13.

(Marked Exhibit No. 13.)

7 Q. Exhibit 13 a letter from Jones Day in response to what
8 we have marked as Exhibit 12; do you see that?

9 A. Yes, I believe so.

10 Q. And you see this is -- the letter starts out by
11 thanking the authors for their letter of July 12th?

12 A. Yes.

13 Q. And then in the second paragraph Jones Day goes on to

Page 228

14 orrrroughdraft (3).txt
say, consistent with the position Dave Heiman and I
15 expressed at the meeting, we still think it makes
16 sense to first try to reach common ground with key
17 unions and association leaders on actuarial
18 assumptions and methods and the amount of PFRS
19 underfunding and then tackle contributions and
20 attendant benefit changes. Do you see that?

21 A. Yes, it speaks for itself.

22 Q. And was that the position of the city as of July 17,
23 2013?

24 A. Yes, we said that before.

25 Q. As of July 17th now, 2013, had the city presented any

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uncertified rough draft

1 proposals that were different from the proposals set

2 out in the June 14th document?
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orrrroughdraft (3).txt

3 A. As I said previously, subject to that testimony about
4 discussions that were had at these meetings, I think
5 this letter speaks for itself. We were requesting
6 input from the various interested parties as far as
7 our June 14th proposal.

8 Q. And the discussions were the same ones that you
9 answered about in the very last question?

10 A. Yes.

11 Q. When I asked you what the discussions were?

12 A. Yes.

13 Q. And as of June 17th -- I'm sorry, July 17th, had the
14 city actually sat down with any union or retiree
15 association to attempt to reach an agreement on a
16 restructuring plan that had terms that were different
17 from the terms in the June 14th proposal?

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18 A. July 17th? orrrroughdraft (3).txt
19 Q. I'm sorry, yes.
20 A. Yes.
21 Q. If I misspoke I'm asking as of July 17th.

22 A. Yes, we may have.

23 Q. You say you may have. Did you?

24 A. I was aware that there were ongoing confidential

25 negotiations with at least one union.

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uncertified rough draft

1 Q. Okay.

2 A. -- about a proposal.

3 Q. Okay. Were you present during those negotiations --

4 those discussions?

5 A. I have -- I have not -- I have met with members'

6 representatives of those unions. I'm not sure I was
Page 231

orrrroughdraft (3).txt

7 in on all negotiations.

8 Q. Are these discussions that the city has stated are
9 subject to privilege under federal rule of evidence
10 408?

11 A. Yes.

12 Q. Okay. And other -- so will you tell me what was said
13 at those sessions?

14 MR. SHUMAKER: Objection to the extent it

15 calls you to reveal privileged communications.

16 A. Yeah, those discussions are ongoing and so I'm -- I
17 have to be a little circumspect. Suffice it to say
18 there were discussions along the line of this exchange
19 of letters of what could be addressed based upon our
20 June 14th proposal.

21 Q. Okay. And with whom were those discussions? Which

Page 232

22 orrrroughdraft (3).txt
groups? You said you met with one or two groups or
23 you were wear of meetings with one or two groups.
24 A. I think those are confidential. Because as I said,
25 those discussions are ongoing, so I don't want to

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1 interfere with settlement negotiations or breach
2 confidentiality so I'm reluctant to answer your
3 question.
4 Q. Okay, well will you answer my question or will you
5 not?
6 A. I don't think I can. I think they're supposed to be
7 confidential.
8 Q. Well, you know, you have to answer the question unless
9 your counsel instructs you not to.
10 MR. SHUMAKER: If you think it's going to
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orrrroughdraft (3).txt

11 reveal privileged communications, I'm going to
12 instruct you not to answer.
13 A. I'll be -- I don't know so much -- can I consult with
14 my counsel?
15 MR. ULLMAN: Yes.
16 THE WITNESS: Can we go off the record?
17 MR. ULLMAN: Yes.
18 THE WITNESS: Let's step out.
19 THE VIDEOGRAPHER: Going off the record at
20 1:53 p.m.
21 (A brief recess was taken.)
22 THE VIDEOGRAPHER: We're back on the record
23 at 1:57 p.m.
24 Q. Okay, will you answer my question, Mr. Orr?
25 A. No, I think this is concerns commercially sensitive

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orrrroughdraft (3).txt

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uncertified rough draft

1 potentially confidential settlement negotiations and
2 implicates the attorney-client privilege so I cannot
3 answer your question.
4 Q. Okay, so apart from the discussions that you won't
5 tell me about, would the city actually sit down with
6 any union or retiree association in an attempt to
7 reach an agreement on a structuring plan on terms that
8 are different than the terms set out in the June 14th
9 proposal as of July 17th?
10 A. As I said before subject to the meetings we've had
11 we've exchanged information which may constitute the
12 type of sit down you're talking about. Other than the
13 ones that have been recounted and phone calls and
14 meetings I may not be aware of, this is what I know in
Page 235

orrrroughdraft (3).txt

15 my declaration.
16 Q. And as of June 17th then I take it you had not
17 received any actual proposal -- I'm sorry keep saying
18 June.
19 A. July.
20 Q. As of July 17th you had not received any actual
21 proposal outside possibly with the settlement
22 discussions you were talking about from any union or
23 retiree association; is that right?
24 A. Outside of those settlement negotiations.
25 Q. Yes.

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1 A. That is correct.
2 Q. Now, as of July 17, have the city told any union or
Page 236

3 retiree association that it would in fact be willing
 4 to proceed with the restructuring on terms that did
 5 not include the elimination of ongoing pension
 6 contributions for retirees?
 7 A. When you mean the city you mean all of my consultants
 8 and others; correct?
 9 Q. Yes.
 10 A. There may have been discussions in that regard. I
 11 think I recall hearing that there was -- I can't
 12 recall a specific meeting, a discussion about how that
 13 would be arranged but I'm not sure.
 14 Q. So you personally did not make any such statement; did
 15 you?
 16 A. Statement about?
 17 Q. Saying to anyone -- to any union or retiree
 18 association that the city would in fact be willing to
 Page 237

19 agree to a restructuring that did not involve the
 20 elimination of ongoing pension contributions for
 21 retirees.
 22 A. No, I didn't say that.
 23 Q. And do you know in fact whether anyone working on your
 24 team ever said that to any union or retiree
 25 association?

¶

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1 A. No.
 2 Q. Okay. During the time from June 14th to July 17, did
 3 you or anyone else from your team tell any union or
 4 retiree association that the city acknowledged that
 5 under Michigan law pension rights were explicitly
 6 protected from being impaired or diminished?
 Page 238

7 A. I don't know.
 8 MR. SHUMAKER: Objection, form, calls for
 9 speculation.
 10 A. I don't recall anyone saying that but it may have
 11 happened.
 12 Q. But you personally didn't make that statement did you?
 13 A. I don't recall saying that. I may -- you know,
 14 anything is possible, I just don't recall saying it.
 15 Q. And as of July 17 had the city, you or anyone working
 16 for you, told any union or retiree association that it
 17 would in fact be willing to agree to a restructuring
 18 plan that did not effectively eliminate the prior
 19 existing health benefits for retirees?
 20 MR. SHUMAKER: Objection, foundation, calls
 21 for legal speculation.
 22 A. Healthcare benefit for retirees?
 Page 239

23 Q. Yeah.
 24 A. That did not eliminate it?
 25 Q. Yeah that you --
 uncertified rough draft
 1 A. Did not adjust it in some fashion?
 2 Q. Did not essentially cut it out the way it was being
 3 cutout in the June 14th proposal.
 4 A. Yeah, I want to be careful with the frame cutout
 5 because I think there were subsequent discussions
 6 about what would be provided instead.
 7 Q. Uh-huh.
 8 A. -- as a proposal so I don't want my testimony to seem
 9 as if we were not proposing an alternative to the
 10 existing healthcare plan and that had not been
 Page 240

¶

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11 discussed prior to July 17th, but subject to those
 12 qualifications the answer to your question is yes.
 13 Q. Now, I've been asking you as of July 17 and then the
 14 bankruptcy filing was the very next day; correct?
 15 A. Yes.
 16 Q. Now, in your declaration do you recall making
 17 statements to the effect that there were expressions
 18 by certain union representatives that they would not
 19 and I quote countenance discussions over proposals to
 20 modify either retiree healthcare or pensions?
 21 A. Yes, I think those are quite publicly stated.
 22 Q. And you refer in your declaration to newspaper reports
 23 from June 20 and 21?
 24 A. Yes, and I'm trying to recall if people said that to
 25 me personally as well. Yes, but I do recall the press

1 reports, yes.
 2 Q. And those are in fact press reports that you referred
 3 to as you said?
 4 A. Yeah, but I think -- and I'm just -- was your question
 5 asked about union representatives or union members?
 6 Q. Union representatives.
 7 A. Could that include members?
 8 Q. I'm not asking about people who are just members and
 9 not officials in the union.
 10 A. So you're talking about union officials?
 11 Q. Union officials.
 12 A. Okay. That they would not countenance any change
 13 to --
 14 Q. I think the language from your declaration is that

15 they would countenance discussions or other proposals
 16 to modify either retiree healthcare or pensions.
 17 A. Yeah, I don't think that was just a function of press
 18 reports, I think that was relayed to me upon my
 19 information and belief upon others as well.
 20 Q. Upon your information and belief sounds like you
 21 didn't hear it personally?
 22 A. No, I just don't recall whether I heard it personally.
 23 I have heard it personally in other meetings from
 24 union representatives prior to July 17th, sure.
 25 Q. With respect to the statements that you quote in the

1 newspaper, those are just newspaper reports; right?
 2 A. Well, if they're newspaper -- they speak for

3 themselves if they're newspaper reports. But have I
 4 heard that from union representatives?
 5 Q. I'm --
 6 A. I'm responding to your question. Have I heard that
 7 from union representative? Yes.
 8 Q. I'm going to get these in two phases; okay?
 9 A. Okay.
 10 Q. For the newspaper reports, you're relying on what was
 11 said in the newspaper?
 12 A. Yes.
 13 Q. So you have no personal knowledge as to whether the
 14 quotation in the newspaper was accurate or anything
 15 like that?
 16 A. Unless I was there, I'm not the reporter, yes.
 17 Q. Now, what statements were made to you outside of what
 18 you read in the newspaper?

19 A. Quite early on I had heard from union representatives,
20 I believe at DFFA, DPLSA, DPOA, I'm not sure it
21 includes AFSCME, UAW, but I had heard statements in
22 that regard in many of the meetings that I've had with
23 them previously prior to July 17th.
24 Q. And did they specifically -- what statements saying
25 specifically what?

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1 A. Generally, you know, I don't know the exact quotes but
2 generally speaking what I said. They would not
3 countenance cuts to healthcare and benefits.
4 Q. That wasn't actually what you said in your
5 declaration.
6 A. That's what I said generally.

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7 Q. what you said in your declaration is they would not
8 countenance discussions over proposals to modify
9 either retiree healthcare or pensions.
10 A. Yeah, healthcare, okay, yes.
11 Q. So who said what -- I would like to know specific as
12 to who said what to you when?
13 A. As I said, I had meetings early on with DFFA, I don't
14 recall the specific members but I recall the meeting,
15 they were quite heated. Might have been one with
16 Mr. McNamara, Mr. Shinsky and others. I've had many
17 meetings with DPLSA, Rodney Sizemore and Mark Young.
18 I've had meetings with DPOA, Mark Diaz, where that was
19 said prior to July 17th.
20 Q. Okay. And you're aware that the at least two of the
21 individuals that you mentioned are signatories to what
22 we've marked as Exhibit 12?

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23 A. Yes.
24 Q. So you're not suggesting, are you, that those people
25 were saying that their unions would not in any event

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1 negotiate with the city; were you?
2 A. I didn't -- that's not my testimony. That's what I
3 say in my declaration. I think most of the
4 discussions that were had were, here again, staying
5 away from the traditional concept of negotiating
6 because I'm not waiving any rights, but the general
7 concern is we're not going to change pension and
8 healthcare benefits, there were a lot of discussions,
9 these are affecting people's lives, these are promises
10 that the city has made, all the things you've heard

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11 before. Those were recounted to me many times.
12 Q. Okay. And as we saw from the document we've marked as
13 Exhibit 12, the DFFA was in fact interested in getting
14 specific proposals from the city and said it would be
15 making its own proposal; correct?
16 MR. SHUMAKER: Objection, calls for
17 speculation.
18 A. The letter speaks for itself, but it says it would be
19 productive if the city could provide us with specific
20 proposals on pension benefit restructuring as soon as
21 possible. I think that there had been discussions in
22 some of those meetings about pension benefits but I
23 guess they're asking for more detailed information.
24 Q. And it also says as we went through before in the
25 fourth paragraph we are reviewing and will provide the

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1 city with specific proposals; correct?

2 A. Yeah, that's the information I got and they said they

3 were going to provide us with specific proposals.

4 Q. Okay. And -- okay.

5 And then we saw the response to that was in

6 Exhibit 13 again; correct?

7 A. Yes, this is the given for the discussions I talked

8 about.

9 Q. And then the bankruptcy filing was the very next day;

10 correct?

11 A. Yes.

12 Q. Did you personally have any discussions with

13 representatives of any retiree associations?

14 A. Yes.

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15 Q. which ones?

16 A. Fire, Detroit -- police and fire I think, yes. Early

17 on with --

18 Q. The police and fire?

19 A. Yes.

20 Q. And what was the substance of those discussions?

21 A. This was concerns expressed about potential impact to

22 pensions and healthcare obligations.

23 Q. And are you aware that the police and firefighters

24 association RDPP-- I'm sorry, RDPFFA, that's who

25 you're referring to?

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uncertified rough draft

1 A. Right, RDPFFA, yes.

2 Q. Retired Detroit police and firefighters association.

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They represent retired police and firefighters;

3 correct?

4

5 A. Yes. I assume, that's their name.

6 Q. Did anyone from that organization tell you that they

7 were refusing to negotiate with the city?

8 A. No, I don't think the discussion was of that nature

9 and character about refusing to negotiate. I think it

10 was quite -- by some members of that meeting made

11 quite clear that they were not interested -- refusing

12 is a big word. It was made quite clear they were not

13 interested in hearing about adjustments to pension

14 benefits.

15 Q. But you're not saying that that organization said it

16 refused to negotiate with the city; are you?

17 A. Like I said, refused is a big word. There was a lot

18 of stridency in the conversations.

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19 Q. But to be clear your testimony is not that the retiree

20 association for the police and firefighters said that

21 they would refuse to enter into any negotiations with

22 the city?

23 A. No, I keep saying it's not a question of refusing, it

24 was that you can't do this. So they didn't say and

25 we're not going to ever talk to you again. That did

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uncertified rough draft

1 not occur. What was very strident about you can't

2 do this.

3 Q. And you could understand why they were strident about

4 what was being done to their retirement benefits can't

5 you?

6 A. Well nothing's been done to their retirement benefits.

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15 orrrroughdraft (3).txt
it's up to them to do something like that; right?

16 A. Yeah, like Harris Teeter did last week, yes.

17 Q. And on the pension side of things has there been any

18 change from what was set out in the June 14th

19 proposal? As I understand this, it's still a defined

20 contribution plan for current employees and no

21 contributions being made by the city for retired --

22 for retirees is that right?

23 MR. SHUMAKER: Object to the form.

24 A. Yeah, the general consensus is that you would close

25 the plan and there would be contributions for

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uncertified rough draft

1 currents, yes.

2 Q. And so again just to be clear that means for retirees

3 no ongoing contributions provided by the city?

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orrrroughdraft (3).txt

4 A. None other than their participation in the note that's

5 proposed in the June 14th proposal.

6 Q. And with no new funding for their pensions the

7 payments will stop to the retirees would stop being

8 made when the retirement funds run out; is that right?

9 A. That's a loaded question. I mean, the -- and the

10 reason I say it's a loaded question, some of the

11 retirement funds have said their payments won't run

12 out so that's why we want to have a dialogue. We

13 think they're at risk. They've told us they're not.

14 Q. And by the city's estimation the pension funding will

15 run out when if no new funds are put in?

16 A. Well, as you can see from our proposal, we have -- not

17 so much from the proposal but June 14th as well, we

18 made certain assumptions as to when the funds might

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19 orrrroughdraft (3).txt
run out if nothing is adjusted one way or the other.

20 we've been told that we're wrong so --

21 Q. I'm asking. I'm asking the city's point of view.

22 A. The city's point of view is that we've made an

23 accurate and fair assumption that the funds will run

24 out at some point within the next two decades.

25 Q. And that's if no new money is contributed?

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uncertified rough draft

1 A. If -- well, and I'm being very careful. It's not just

2 if there's no new money, it depends upon actuarial

3 rates, it depends upon rate of return. Pensions could

4 invest in the Microsoft of their day and have more

5 than enough funds for the foreseeable future. But

6 assuming certainly reasonable assumptions that is the

7 conclusion of the city.

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orrrroughdraft (3).txt

8 Q. And just to be clear, and that assumption as to when

9 it would run out assumes no further contributions by

10 the city; correct?

11 A. Yes, it assumes we close the plan. Other than the

12 note.

13 Q. And do you have any more specific recollection as to

14 when the funds would run out other than within the

15 next two decades?

16 A. It's in my papers. If you want to point me to it,

17 that's fine, but I'll stand by what's in the papers.

18 Q. Now, you recall of course putting in a declaration in

19 the bankruptcy?

20 A. Yes.

21 Q. I guess I can actually give you a copy in case you

22 want to refer to it.

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23 A. Okay. orrrroughdraft (3).txt

24 MR. ULLMAN: Which we'll mark as 15.

25 (Marked Exhibit No. 15.)

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1 Q. Okay, and Exhibit 15 is your declaration?

2 A. Yes.

3 Q. There's a lot of financial information that you put

4 out in your declaration; right?

5 A. Yes.

6 Q. One thing I didn't see in here is a balance sheet

7 showing the assets and liabilities of the city.

8 A. That is correct.

9 Q. Does one exist?

10 A. Not in the traditional sense that you're speaking of.

11 I think in our June 14th proposal we try to provide --
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orrrroughdraft (3).txt

12 and in other proposals we try to provide for some

13 listing of the city's potential assets of any

14 substantial form but it is their traditional corporate

15 balance sheet for instance for the city, no, not yet.

16 Q. Do you have schedule of assets and liabilities that

17 exist though?

18 A. Yes.

19 Q. Have those been produced?

20 A. I don't know if we've completed the schedules so --

21 you're talking about the schedules of assets and

22 liabilities? I don't know.

23 MR. ULLMAN: I'll call for their

24 production.

25 MR. SHUMAKER: We will see.

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orrrroughdraft (3).txt

1 MR. ULLMAN: I'm sorry?

2 MR. SHUMAKER: We'll look into it. I'm not

3 sure whether they've been produced or not right now as

4 I sit here.

5 A. Well, just to be clear, as you know, under Chapter 9

6 the time frame of it.

7 Q. That wasn't my question.

8 A. But I'm answering your question so it won't be unclear

9 on the record.

10 Q. But there isn't a question.

11 A. No, I'm being responsive. So it won't be unclear on

12 the record. Under Chapter 9 they're actually not due

13 yet, so let's just be clear.

14 Q. Now, at paragraphs 52 through 57 of your declaration

15 you make a number of statements about insolvency?
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orrrroughdraft (3).txt

16 MR. SHUMAKER: What page?

17 MR. ULLMAN: Sure, it's 37.

18 A. Yes.

19 Q. And in particular you cite a lot of figures with

20 respect to cash flow and you give projections?

21 A. Yes.

22 Q. Now, I think you indicated you're not an accountant?

23 A. No, I'm not.

24 Q. And is it correct that you yourself did not prepare

25 the cash flow numbers and projections?

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1 A. That is correct.

2 Q. The underlying work was done by others?

3 A. Yes.

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4 Q. And in your declaration you cite a number of sources
 5 for the figures that you give in paragraphs 54 through
 6 57?
 7 A. Yes.
 8 Q. You don't cite Ernst & Young as one of the sources?
 9 A. No, that's because Ernst & Young submitted a parallel
 10 affidavit at the time of this filing of Gaurav
 11 Malhotra.
 12 Q. Didn't the city in fact retain Ernst & Young to
 13 prepare these cash flow projections?
 14 A. The city retained Ernst & Young I believe over two
 15 years ago to work on liquidity, cash flow and
 16 analysis. I don't think it was limited to just cash
 17 flow projections.
 18 Q. But that's one of the things that Ernst & Young did?
 19 A. Yes.

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20 Q. And that's one of the things in fact that -- what's
 21 his name -- Gaurav Malhotra did?
 22 A. Gaurav Malhotra.
 23 Q. I'm sorry.
 24 A. No problem.
 25 Q. And Mr. Malhotra was in fact one of the lead Ernst &
 153
 uncertified rough draft
 1 Young players involved in working with the city;
 2 wasn't he?
 3 A. Yes, he's a principal at Ernst & Young.
 4 Q. And is it correct that the figures that you're citing
 5 in these paragraphs of your declaration in fact come
 6 from work that come from Mr. Malhotra?
 7 MR. SHUMAKER: Which figures are we talking
 Page 266

8 about counsel?
 9 MR. ULLMAN: Basically by my recollection
 10 all of -- pretty much all of the figures. Certainly
 11 in 54 these numbers about the 225 million, the
 12 schedule that appears on page 39, the information
 13 about the retiree legacy obligations being 8 percent
 14 of revenues and this was all -- and going on I just
 15 tried to chart it out briefly. It looked to me
 16 basically all this was taken or appeared also in the
 17 affidavit or declaration of Mr. Malhotra.
 18 MR. SHUMAKER: I object to all this.
 19 That's why I'm trying to ask you to be specific so
 20 that the witness can give a responsive answer.
 21 A. Yeah, let me say --
 22 MR. SHUMAKER: Paragraphs 54 through what?
 23 MR. ULLMAN: 57.
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24 THE WITNESS: 57.
 25 MR. SHUMAKER: Through 57.
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 uncertified rough draft
 1 A. Let me say this generally. If you look at Gaurav
 2 Malhotra's declaration, he states that this
 3 information is compiled by him in conversations with
 4 city employees and other consultants as well. So I
 5 don't want to give the impression that he's the sole
 6 source for the data that we recovered. It is a
 7 compilation of data from a number of different sources
 8 and I relied on those same sources too and as this is
 9 reported in the various footnotes to source the
 10 material, they may have come from Mr. Malhotra but
 11 they may have come from a number of different sources
 Page 268

12 in the process of him developing the work.

13 Q. But either way they were not done by you personally?

14 A. No, they were not done by me personally.

15 Q. Did you do anything to verify the numbers the figures

16 the calculations done in paragraphs 52 through 57 of

17 your declaration were accurate?

18 A. Yes.

19 Q. What did you do?

20 A. I discussed them with Mr. Malhotra and a number of

21 different consultants. We discussed them with the

22 economists at Ernst & Young and other accountants. I

23 discussed some of them with city employees.

24 Q. Okay, so you essentially satisfied yourselves that the

25 people who prepared these numbers did what they were

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1 supposed to do and made what you thought were

2 reasonable assumptions in coming to them; is that

3 fair?

4 A. Yes. I mean some of them are just factual statements

5 but yes to the extent there were assumptions and work

6 being done, there was some participation in the

7 organic work.

8 Q. Okay and you relied on the information that was being

9 provided to you?

10 A. Yes by the professionals.

11 Q. By the people -- by the professionals you hired to

12 perform that task?

13 A. Yes.

14 Q. Now, is it correct that in the years prior to the time

15 you got there Detroit was subject to various scandals

Page 270

16 including financial mismanagement?

17 A. Yes.

18 Q. And one of the former mayors in fact went to jail for

19 corruption; isn't that right?

20 A. He's been convicted. I don't know if he's sentenced

21 but certainly that's been widely written about.

22 Q. Right. And do you know whether the books and records

23 that survived that administration were complete and

24 accurate?

25 A. I know that the, for instance, the CAFER consolidated

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4 books and records. My testimony would be that to the

5 best extent possible based upon the data that we got

6 we relied on those books and records.

7 Q. And is it correct that the books and records -- and

8 those were the same books and records that are

9 Mr. Malhotra relied on; right?

10 A. Yes, I think.

11 MR. SHUMAKER: Objection, calls for

12 speculation.

13 A. I think Mr. Malhotra's declaration states that Ernst &

14 Young did not audit the books and records of the city.

15 Q. And did anyone else audit the books and records of the

16 city before these numbers appear in your declaration

17 were prepared?

18 A. There may have been. I'm not sure because depending

19 upon at any given time where the numbers come from

Page 272

20 they may have been subject to an audit or they may
21 have been subject to a review, for instance the
22 pension numbers. Gabriel Rotor, which was GRS's
23 traditional actuary, may have done some balance so in
24 my understanding based upon both the information I
25 received and discussion from Malhotra's declaration,

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1 Ernst & Young did not audit them and I'm not an
2 auditor so that's my understanding.
3 Q. But do you know whether or not anyone else audited --
4 A. I don't know.
5 Q. And is it correct that if the underlying data of the
6 books and records that were being used to prepare
7 these cash flow numbers and projections have material

Page 273

8 inaccuracies that those would affect the projections
9 and the figures as well?
10 MR. SHUMAKER: Object to the form.
11 A. That's a hypothetical, but I think it's fair to say
12 that if they had material inaccuracies, they would
13 have an impact, but I'm unaware that they are
14 materially inaccurate.

15 Q. But that's never been subject to an audit; has it?
16 A. To the best of my knowledge I don't know when they
17 have or when they haven't.
18 Q. Okay. And I think you indicated that in coming up
19 with these figures various people were consulted in
20 various fields and a number of assumptions were made;
21 is that right?
22 A. I believe so.

23 Q. And I think you also indicated in your structuring

Page 274

24 proposal from June 14th that the numbers are subject
25 to various assumptions which could or could not prove

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uncertified rough draft

1 right; correct?
2 A. Well, I think in June 14th we've said that it's a
3 proposal and there may be various issues that may or
4 may not be correct.
5 Q. Yeah. Okay, and obviously if any of the assumptions
6 that went into the underlying numbers that appear in
7 your declaration are wrong, then the numbers
8 themselves would also be subject to inaccuracy; true?
9 A. Let me say this about that. Both in June 14th
10 presentation and in this declaration, we've tried to
11 present an accurate picture of the city's books and

Page 275

12 records and status to the best extent possible that we
13 have. Where there were questions we have tried to err
14 on the side of reasonable assumptions as opposed to
15 unreasonable assumptions either way. But your general
16 question as to whether or not if the information going
17 in was inaccurate revealed an inaccurate result I
18 think it's true just as a matter of common sense and
19 logic.
20 Q. And the same thing as to assumptions. If the
21 assumption made was wrong, then the output would be
22 wrong also?
23 A. I think that's why we asked several times to have a
24 discussion about the assumptions that are necessary
25 for pension benefits.

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1 Q. Now, the cash flows that are being reported in your
2 declaration, those do not include any assumptions as
3 to the monetization of various assets that the city
4 continues to hold; is that right?

5 MR. SHUMAKER: This is paragraph 56 that
6 you're referring to, counsel?

7 MR. ULLMAN: Yeah, I'm looking in general.

8 MR. SHUMAKER: In cash flow?

9 MR. ULLMAN: Yeah, cash flow.

10 A. You're talking about generally do the cash flows
11 include any monetization of any city assets?

12 Q. Yeah.

13 A. No, they do not.

14 Q. And obviously if assets currently held by the city
15 were monetized that would provide additional cash to

Page 277

16 pay obligations including retirement and health

17 obligations correct?

18 A. Well, additional cash from one time asset sales may
19 not necessarily equal cash flows. As I understand the
20 analysis, we've tried to present is cash flows based
21 upon a recurring basis as opposed to one time assets
22 but it would yield additional cash.

23 Q. Yes. If you sold an asset and had money you would
24 have the money available to pay something?

25 A. Yeah, you might have a one time -- I'm not an

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uncertified rough draft

1 accountant but you might have a one time cash charge

2 yes.

3 Q. And if the cash, the amount you got was large, it

Page 278

4 could last for a long period of time; correct?

5 A. Well, it depends upon what --

6 MR. SHUMAKER: Objection, form.

7 A. Depends upon what it was used for. I mean, what are
8 you talking about? When you say could last for a long
9 period of time, it could be a one -- you could sell
10 one asset for \$5 million and that wouldn't last a
11 month.

12 Q. Yes, and depending on the amount of assets that were
13 sold if you got a substantial amount of money that
14 could enable the City of Detroit to pay ongoing bills
15 for some period of time; true?

16 MR. SHUMAKER: Objection to form.

17 A. Here again, depending upon the size of the asset, but
18 anything is possible.

19 Q. Okay. Now, the City of Detroit owns certain pieces of

Page 279

20 art that are stored at the Detroit Institute of Art;

21 is that right?

22 A. Yes.

23 Q. And how many is that?

24 A. I think the city owns approximately 66,000 pieces of
25 art.

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uncertified rough draft

1 Q. Now, those --

2 A. No, strike that. Let me be clear so we can move on.

3 Q. Yeah.

4 A. I think there are 66,000 pieces of art over at Detroit
5 Institute of Art. I'm not sure the city owns all
6 66,000 pieces. I've been informed that it owns 35,000
7 of those pieces in an undisputed capacity.

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8 Q. Okay, that's what I was getting at. And that's
9 distinct from art that is subject to a public -- or is
10 or may be subject to a public trust or something like
11 that. This is 35,000 pieces that the city owns as you
12 said in an undisputed capacity?
13 A. Outright, yes.
14 Q. Outright. Now, is it correct that the city has
15 retained Christie's to appraise this city-owned art?
16 A. Yes.
17 Q. And have you gotten back any information yet from
18 Christie's as to the appraised value?
19 A. No.
20 Q. And do you have any understanding as to the value of
21 the appraised -- of the art that's being appraised
22 independent of what -- of Christie's as a source?
23 A. Only what I've read in various news articles and

Page 281

24 blogs.
25 Q. And I think you've seen press reports indicating that
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uncertified rough draft
1 for some of the most important works alone the value
2 could be at least 2.5 billion or something on that
3 order?
4 A. We talked about press reports earlier and I was
5 cautioned to be careful so I'm going to say the same.
6 Q. I'm just asking.
7 A. I'm trying to respond to your question. I'm going to
8 say the same thing about press reports here. I have
9 seen press reports reporting various values for the
10 art.
11 Q. And have you seen press reports reporting for the most

Page 282

12 important pieces alone values on the order of 2.5
13 billion?
14 A. I don't recall if I've seen those specific press
15 reports.
16 Q. Do you have any reason to believe that the value of
17 the city-owned art is less than something on that
18 order of magnitude?
19 A. I'm relatively agnostic on the value of the art at
20 this point. I'm waiting to see the appraisal.
21 Q. Do you have any understanding as you sit here today as
22 to what the value of the city-owned art is?
23 A. No.
24 Q. Are you considering selling the city-owned art to
25 generate cash?

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uncertified rough draft

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orrrroughdraft (3).txt
1 A. What I've said consistently is all options on the
2 table but we first have to decide what we're talking
3 about.
4 Q. Do you have any understanding as to how long it would
5 take to sell the art if a decision were made to sell
6 it?
7 A. No.
8 Q. Have you considered other ways to monetize the art
9 besides an outright sale?
10 A. All options are on the table.
11 Q. Well, have you considered any others in particular?
12 A. We have not made -- meaning my team and I have not
13 made any decisions with regard to the art contained at
14 DIA.
15 Q. I'm not asking about decisions I'm just asking what

Page 284

16 orrrroughdraft (3).txt
you considered?

17 A. We considered allotted of things yes.

18 Q. And have you -- well then can you answer my question

19 more specifically? What if anyways to monetize the

20 art have you considered other than an outright sale?

21 A. I think there's been discussions about some form of --

22 and I'm not clear because to be direct, I know that

23 some of my -- I've never been to DIA, I don't think

24 I've ever spoken with their board, I know that some of

25 my consultants have been over there and have had

uncertified rough draft

1 various discussions about the art. I think the

2 discussions were very high level and very general.

3 That's what I know.

4 Q. Okay, that's really very nonspecific. Are you aware

Page 285

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5 of any specific consideration given to any form of

6 monetizing the art other than an outright sale?

7 A. No, nothing specific.

8 Q. Could be a lease -- nothing has been idea identified

9 as a possible route to monetize?

10 A. Nothing specific. There have been discussions but

11 nothing specific.

12 Q. Have there been discussions of leasing as a possible

13 way to monetize?

14 A. Possibly, yes.

15 Q. Okay. And do you have any understanding of the amount

16 of cash flow that could be generated on an annual

17 basis if the art were leased?

18 A. Sitting here today, no.

19 Q. Has that number been talked about? Is there a

Page 286

20 orrrroughdraft (3).txt
document that might discuss that?

21 A. No, no, there's no document. I -- I -- in an effort

22 to be accurate I think I had a discussion with one of

23 the representatives at Christie's that was generally

24 speaking leasing is a very difficult thing to do.

25 That's the nature of the discussion that you would

uncertified rough draft

1 have to have the right pieces at the right time at the

2 right market to generate cash.

3 Q. So there was no discussion about the amount of money

4 it could generate?

5 A. No, no, it -- there was some discussion about 1

6 million dollars, for instance, or something like that,

7 but it's nothing substantive.

8 Q. Okay. Now, the city also has a department of water

Page 287

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9 and sewers; is that right?

10 A. Yes.

11 Q. And as I understand it the department of water and

12 sewers operates as a separate entity for accounting

13 and operating purposes?

14 A. As a result of Judge Cox's opinion it has separate

15 procurement, accounting and managerial

16 responsibilities but as it's stated in that opinion it

17 remains an asset in the department of the city.

18 Q. And is it correct that the water and sewer department

19 has issued secured bonds?

20 A. Yes, they're in my June 14th proposal.

21 Q. Okay and I don't recall. What was the value of the

22 bonds that were issued?

23 A. The secured portion of the bonds all in but this also

Page 288

orrroughdraft (3).txt
24 includes some parking -- parking was 95 million, some
25 dedicated state revenue bonds was a couple hundred
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uncertified rough draft
1 million but generally speaking about 5.7 billion.
2 Q. And those bonds -- the 5.7 billion is secured by the
3 assets of the department?
4 A. Yes, yes.
5 Q. And as you understand it, does the value of the assets
6 of the department of water and sewers exceed the
7 values of the secured bonds?
8 A. I don't know if there's been a formal appraisal but I
9 certainly would hope so.
10 Q. Do you have an understanding of the value of the water
11 and sewer assets?
12 A. Not sitting here today.
Page 289

orrroughdraft (3).txt
13 Q. Do you have a general understanding, a general
14 recollection?
15 A. When you talk about asset values, you're talking about
16 switches, pipes, valves, things along that nature. I
17 don't think I've ever seen an appraisal of the value
18 of the assets of the water and sewer department.
19 Q. Do you have a general understanding of what the value
20 of the assets?
21 A. No.
22 Q. Is worth?
23 A. No.
24 Q. Have you taken any steps to monetize the value of the
25 assets owned by the water and sewer department?

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uncertified rough draft
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orrroughdraft (3).txt
1 A. When you say monetize, I'm going to respond to the
2 question on basis that monetize is in the broad sense.
3 Q. Uh-huh.
4 A. Not whether it's a lease, whether it's a sale, getting
5 authority.
6 Q. Just get money for it?
7 A. Get money for it, get some dough, okay just want to be
8 clear. Discussions are ongoing in that regard.
9 Q. What are those discussions in a nutshell?
10 A. Those are commercially sensitive so I don't want to
11 interfere. Suffice it to say, the Judge Cox's opinion
12 spoke to the possibility of creating an authority that
13 would remove the water and sewer department's
14 operations not the assets, from the city and perhaps
15 increase additional value as a by-product of that
16 process.
Page 291

orrroughdraft (3).txt
17 Q. And this is what is referred to in the June 14th
18 proposal or this transaction with this new authority?
19 A. Yes.
20 Q. And that would involve some sort of payment by the
21 authority to the city?
22 A. Yes, some sort of lease payment or like kind payment.
23 Q. Do you have any understanding -- can you give me any
24 idea as to the value that would be achieved by that,
25 the amount of cash that the city would be achieving,
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uncertified rough draft
1 realizing if that went through?
2 A. Judge Cox's opinion and I'm referencing the opinion to
3 state what's already in the record references I
4 believe a 62 million dollars payment which he called
Page 292

5 wildly speculative. But there may be payments in that

6 regard somewhere between 40 or lower to maybe up to

7 100. It's unclear.

8 Q. Right now who has control over the revenues that are

9 taken in by the department of water and sewers?

10 A. City does.

11 Q. Now, the department of water and sewers also had

12 retirement obligations for its --

13 A. Well, they have employees that are members of the

14 general retirement fund.

15 Q. Right. And how were payments to the retirement fund

16 for those employees to be made? In other words, were

17 they to be made directly by the department of water

18 and sewer to the retirement systems or were they made

19 by the department of water and sewer to the city which

20 then was to remit them to the retirement systems?

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21 A. You're talking about the transaction or steady state

22 now?

23 Q. The steady state.

24 A. Steady state now. My understanding is that's part of

25 the city's obligation.

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uncertified rough draft

1 Q. So the DWS department of water and sewers is to give

2 the money for the retirement to the city, the city

3 was?

4 A. City makes it.

5 Q. Was then supposed to make the payment to the

6 retirement systems?

7 A. Uh-huh.

8 Q. And are you aware of any funds that were transmitted

Page 294

9 by the department of water and city (sic) to the city

10 for the purpose of funding pensions that were then

11 used by the city for other purposes?

12 A. I don't know if you can identify specific water and

13 sewer funds and transactions. I know that the city

14 has borrowed from the general retirement system from

15 time to time.

16 Q. So that's not really answering my question. Can I

17 have my question read back please?

18 A. Okay, sure.

19 (Record read back as requested.)

20 A. Am I aware? It would be speculative. I've -- no.

21 Q. So is it your testimony that all monies that were

22 transmitted by department of water and sewer to the

23 sit to make payment for pension benefits were in fact

24 properly applied to the retirement systems as pension

Page 295

25 contributions?

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uncertified rough draft

1 A. No, that's a conclusion on my statement I wasn't

2 aware. That may have occurred but sitting here today

3 without speculating, I'm not aware of a specific

4 transaction or transactions.

5 Q. So it may have occurred, you just don't know one way

6 or the other?

7 A. I just don't know.

8 Q. Now, you indicated that the city has control over the

9 money that's taken in by the department of water and

10 sewers; yes?

11 A. City has control over the department of water and

12 sewer. There are certain obligations due from the

Page 296

13 department of water and sewer, but yes.

14 Q. Okay. So if the department of water and sewer has

15 money that it wants to spend for a particular purpose,

16 is it correct that the city could decide that the

17 money should not be spent for that purpose and used

18 for something else?

19 A. That would depend upon the nature of the bond

20 obligations that department of water and sewer because

21 although the department remains a department of the

22 city, the bond obligations that are secured have

23 certain security interests in that revenue stream.

24 Q. Okay. Is there anything that restricts the city from

25 taking money from the department of water and sewer

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1 that the department of water and sewer wishes to use

2 for and has earmarked for capital improvements to the

3 water and sewer system?

4 A. Yes, there's probably restrictions in the bond

5 instruments.

6 Q. And other than what may be in the bond instruments is

7 there any legal prohibition on the city taking the

8 money that the DWS would otherwise use for capital

9 improvements?

10 A. Yes, there might be under Judge Cox's opinion.

11 Q. But without reviewing the specifics of Judge Cox's

12 opinion you don't know that?

13 A. I don't know that.

14 Q. Now, are you aware that in its most current proposals

15 the department of water and sewer is proposing over

16 the next several years to spend hundreds of millions

Page 298

17 of dollars on capital projects?

18 A. Yes.

19 Q. And have you given any consideration to not having

20 that money used for capital improvements to water and

21 sewer including new projects but in fact to have that

22 money used to satisfy other existing city obligations

23 which may include but not be limited to pension or

24 healthcare obligations?

25 A. Have we given some consideration? Here again, this is

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uncertified rough draft

1 wrapped up in the potential transaction that is being

2 discussed and I think it's been reported with a number

3 of counties and other parties so I want to be careful

4 that I don't impact commercially sensitive

Page 299

5 information. I know that the capital improvement plan

6 at DWSO is a component of insuring that its

7 creditworthiness remains separate and apart from the

8 city and is at a higher rate. Your question was have

9 I given any consideration to not having them make that

10 capital improvements.

11 Q. Or to having make a lesser capital improvement there

12 by obtaining money for the city to use for other

13 purposes?

14 A. And my response to that would be that's all wrapped up

15 in the discussions regarding transaction and what's

16 necessary to maximize the ability of that department

17 to generate income for the benefit of the city.

18 Q. So is that something that you're looking at and

19 considering to take money that would otherwise be used

20 for capital improvements and apply it to satisfy

Page 300

21 existing obligations?

22 A. As this is a potential transaction that we talked

23 about on June 14th, that's currently under discussion

24 with some of our customer base including other

25 counties. I want to be very careful that I don't

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uncertified rough draft

1 interfere with those negotiations by saying something

2 that would not enhance the value or maintain the value

3 of that asset. Suffice it to say, we are aware of the

4 situation and it is wrapped up in the discussions

5 we're having about a potential transaction.

6 Q. Okay, and at this potential transaction, take that off

7 the table, assume it doesn't go through, or is

8 withdrawn, have you given any consideration to simply

Page 301

9 looking at the capital monies that are available at

10 DWSD and using some or all of them to fund existing

11 obligations rather than new capital improvements or

12 capital improvements to existing work at the

13 department?

14 A. Let me say it this way. We have examined a number of

15 options and alternatives related to DWSD including

16 those that might be implicated by your question.

17 Q. So is the answer to my question yes, you have

18 considered that?

19 A. We have considered all operations at DWSD includes

20 those that might be implicated by your question. I

21 said before I'm going to be very careful so I don't

22 interfere with the commercial aspects with what's

23 going on now.

24 Q. And can you tell me how much you believe or understand

Page 302

25 the city can take from the capital fund from DWSD in

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uncertified rough draft

1 order to satisfy its ongoing obligations if it chose

2 to do that?

3 A. I didn't say --

4 MR. SHUMAKER: Objection to form.

5 A. I didn't say that we would take any capital, I said we

6 will we would consider it.

7 Q. I didn't -- I'm asking can you tell me how much would

8 you understand is available to take if the city

9 decides to go down that route?

10 A. No, I can't tell that you.

11 Q. Have you done any analysis of that?

12 A. Analysis is a strong word. Have we looked at the

Page 303

13 options and related to the transaction all

14 potentialities, but I can't tell you what that number

15 would be.

16 Q. Who within the city would be most knowledgeable about

17 the capital funds that are availability at the DWSD?

18 A. At the city?

19 Q. Yeah.

20 A. Probably the operations at DSWD.

21 Q. You also made reference in the June 14th proposal to

22 the parking systems that the city owns.

23 A. Yes.

24 Q. And as I understand it there are nine garages?

25 A. Yes.

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uncertified rough draft

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1 Q. Two lots with over 1,200 spaces?

2 A. Yes.

3 Q. And over 3,400 meters?

4 A. Yes.

5 Q. Do you have an understanding as to the value of those

6 assets?

7 A. No, we're currently doing our analysis as to the value

8 of those assets now.

9 Q. And you have no preliminary view as to what they're

10 worth? Nothing's been reported back to you on at

11 least a tentative basis?

12 A. No, nothing has been reported back to me on -- because

13 when you talk about values, there's a range of values

14 from asset disposition and outright sale and

15 privatization to creating an operation or an authority

16 where someone has brought in, as has been done in

Page 305

17 washington, D.C., to actually operate the garages and

18 meters. So we're looking at a range of alternatives

19 to determine what those values could be.

20 Q. What's the range of values you're looking at so far?

21 A. We don't have that yet.

22 Q. How concrete have you -- let me withdraw that.

23 what specific steps have been taken so far?

24 A. Our investment advisors and consultants are beginning

25 to discussions with various parties that undertake

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uncertified rough draft

1 these types of operations within a range of

2 alternatives to try to assess values.

3 Q. And the investment advisors would that be Buckfire?

4 A. Yeah it would be our investment banker, Ken Buckfire,

Page 306

5 Miller Buckfire.

6 Q. Okay. In the June 14th proposal you also make

7 reference to about 22 square miles of land that the

8 city owns?

9 A. City-owned land, yes.

10 Q. Do you have an understanding as to the value of that

11 land?

12 A. I've been informed that some of the value is at best

13 nominal but no sitting here today I do not have a

14 number as to the value of the land.

15 Q. Have any steps been taken to try to monetize that

16 value, to get dough as you put it?

17 A. Yeah. Well, here again, you're -- to get income

18 realization perhaps I should say more articulately,

19 but here again we're at the preliminary steps of

20 examining potential alternatives regarding land.

Page 307

21 Q. So you don't know yet?

22 A. No.

23 Q. The Belle Isle Park, that's also referenced in the

24 June 14th proposal?

25 A. Yes.

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uncertified rough draft

1 Q. It's indicated that there's a prospective lease to the

2 state?

3 A. Yes.

4 Q. Okay. And do you expect that to go through?

5 A. I'm going to ask for it. It was proposed and was not

6 accepted in time so the state withdrew it but I do

7 believe we're going to intend to ask that that lease

8 be renewed.

Page 308

9 Q. And what's the annual rent the city would get under
10 that lease?

11 A. The city has a \$6 million maintenance obligation and
12 that would be taken up by the state so that wouldn't
13 be cash to the city, that would relieve us of an
14 obligation. It has several millions to tens of
15 millions of dollars in deferred maintenance at some of
16 the structures on the island and the state would
17 undertake that obligation as well.

18 Q. So it would essentially relieve the City of Detroit --

19 A. Take it off.

20 Q. -- of debt burden it would otherwise bear?

21 A. Yes.

22 Q. You also mention the Joe Louis Arena?

23 A. Yes.

24 Q. Any steps taken to monetize that?

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orrroughdraft (3).txt
25 A. Here again we're under initial analysis and appraisals

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uncertified rough draft

1 about what can be done with that.

2 Q. Do you have any understanding so far as to what the
3 potential cash value is that could be gotten from the
4 use of that stadium?

5 A. Well, there are existing statements regarding cash
6 flows and use of that stadium but we're reviewing
7 different ways to look at it in some fashion.

8 Q. Do you have any understanding or belief as to the
9 value that can be realized from that?

10 A. No.

11 Q. Now, in your June 14th proposal you also make
12 reference to trying to increase the tax collection

Page 310

13 rate.

14 A. Yes.

15 Q. Does the city keep a ledger, a line item, for
16 uncollected taxes?

17 A. The city keeps many line items. I think we -- you
18 mean uncollected taxes?

19 Q. Yeah, listing of --

20 A. Yes.

21 Q. This is the amount for uncollected taxes?

22 A. Yes.

23 Q. Are you aware of any uncollected taxes that have in
24 the past been written off the city's books in the
25 recent tax but may in fact be collectible?

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uncertified rough draft

1 MR. SHUMAKER: Objection to form.
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orrroughdraft (3).txt

2 A. No. No, in fact discussions that I've had is that
3 that -- the 50 percent compliance rate is not linear,
4 that is for every dollar put in to collect additional
5 taxes doesn't necessarily mean you're going to yield a
6 dollar plus in doing it. It might actually be a loss
7 leader so we're examining ways of trying to increase
8 collections. I assume you're talking about real
9 estate property taxes or income taxes?

10 Q. Or income, any kind of taxes.

11 A. Yeah, we're examining a number of different
12 alternatives in that regard but we're trying to
13 determine whether or not it would yield a net positive
14 benefit.

15 Q. Are you aware in the recent past of a tax write-off,
16 an actual write-off of taxes on order of around 700

Page 312

17 million? orrrroughdraft (3).txt
18 A. I have -- I didn't hear that particular figure. I had
19 heard that there was a write-off. Am I aware of it?
20 Yes, I'm aware of it.
21 Q. And what's your understanding as to what write-off
22 was? Was it 700 million, 800 million what's the
23 figure you her?
24 A. I don't know what the figure was but I heard that it
25 was based on noncollectibles. That the probability of

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uncertified rough draft

1 collecting it was very low.
2 Q. Are you aware of any report that indicates that there
3 was a write-off on the order of 700 million possibly
4 more, the figure I her was 700 million that may in
5 fact be collectible?
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orrrroughdraft (3).txt

6 A. I've heard that some people have maintained that is
7 collectible, but I've also heard that the general
8 consensus is it may not be.
9 Q. Okay, and is there a specific set of taxes that that
10 pertains to, this figure we're talking about, seven or
11 800?
12 A. I don't know. I know that that is one of the -- in
13 the presentation we talk about various city assets,
14 airport, Belle Isle, parking, city-owned land, city
15 owned buildings, others, we also have talked about
16 account receivables and I know that that fits in that
17 bucket, potential account receivables.
18 Q. Are you aware that the treasurer Andy Dillon has
19 acknowledged that there's a report that exists that
20 talks about the 700 or so million figure written off

Page 314

21 that really is collectible? orrrroughdraft (3).txt
22 A. That's what I had heard, that's what I men when I said
23 I heard to that extent, yeah.
24 Q. And do you know what this report is?
25 A. No, I just -- I just heard about it coming in in the

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uncertified rough draft

1 process of doing some due diligence, but one, I
2 haven't seen it; two, we're looking into it.
3 Q. So you're in the process of trying to rundown that
4 report and see what it is?
5 A. We're trying to rundown a number of reports, rumors
6 and suggestions that there are account receivables due
7 the city.
8 MR. ULLMAN: And I would like to request a
9 copy of that report.
Page 315

orrrroughdraft (3).txt

10 MR. SHUMAKER: We'll look into it.
11 THE WITNESS: If we have it.
12 Q. Now, did the city put in place tax programs -- tax
13 amnesty programs?
14 A. Has the city put in place?
15 Q. Yes.
16 A. Since I've been here?
17 Q. Yes.
18 A. A tax amnesty program?
19 Q. Yes, to try to get people who owe money --
20 A. No, not yet, no.
21 Q. Is that something you're considering?
22 A. We have had discussions in that regard. I know that
23 it's done for parking tickets and tax amnesty and
24 other municipalities particularly in Washington, D.C.

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25 orrrroughdraft (3).txt
but we have not done that yet.

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uncertified rough draft

1 Q. And I think you indicated that the city has not been

2 very efficient in collecting taxes; has it?

3 A. I think that's a fair statement.

4 Q. Do you have an understanding as to how much tax there

5 is that's collectible in fact could be collected if

6 the city did a more efficient job in going after tax

7 debtors?

8 A. Yeah, as I said, the discussions we've had is that

9 collection efforts are not necessarily linear. That

10 is for every dollar spend you're going to get more in

11 taxes. And in fact there have been some discussions

12 that to the extent you try it could actually be

13 deleterious to the billion dollars of revenue that we
Page 317

orrrroughdraft (3).txt

14 anticipate -- on average that we anticipate receiving

15 in the out years. So we're examining those

16 discussions to see if you can get more recovery by

17 additional collection efforts or if you can be more

18 efficient in your ongoing collection efforts as well

19 as more user-friendly for those who want to pay their

20 taxes. We're looking at the full range of enhancing

21 both tax collections as well as tax payments.

22 Q. Do you have any understanding as to how much value

23 could be achieved if those goals were realized?

24 A. Not sitting here today.

25 Q. And are there any ongoing reports that have been

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uncertified rough draft

1 prepared or documentation talking about what the
Page 318

orrrroughdraft (3).txt

2 realization to the city could be if it got its tax

3 collection act more in line?

4 A. I don't know if it's a report. I've seen some

5 correspondence about tax rates, yes.

6 MR. ULLMAN: Okay I would like to request

7 copies of those documents also.

8 Q. Okay, and then Mr. Orr in your testimony this morning

9 I think you made reference to some other cases that

10 you were aware of where you said that as a result of

11 going into Chapter 9 state laws were effectively

12 trumped and you gave some examples of things, Scheat

13 law and rent control law; is that right?

14 A. No, the -- those were Chapter 9 cases. The cases I

15 was talking about having rent control and Scheat was

16 while I was at RTC, the state dealer law cases was a

17 Chapter 11 case for Chrysler.
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orrrroughdraft (3).txt

18 Q. Okay.

19 A. So it was federal law under FIRREA. If you remember

20 the discussion, I said Financial Institution Reform

21 Recovery Enforcement Act of 1989 as amended trumps

22 state laws.

23 Q. So are you aware of any cases involving a Chapter 9

24 bankruptcy where as a result of going into Chapter 9 a

25 state law was held unenforceable or was held not to

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uncertified rough draft

1 apply in a particular situation?

2 A. I remember reading -- well, this is a communication

3 from counsel.

4 MR. SHUMAKER: Let me caution you.

5 THE WITNESS: Okay.

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6 MR. SHUMAKER: Don't reveal a communication
7 from counsel.
8 THE WITNESS: Okay.
9 MR. SHUMAKER: The question is are you
10 aware of any cases.
11 A. Am I aware of any cases, yes.
12 Q. And what is that case?
13 A. I can't -- it was an attorney-client communication.
14 Q. And are you aware of any cases where to use your
15 phraseology, as a result of a Chapter 9 filing by a
16 municipality the state constitution was trumped?
17 A. Chapter 9 filing?
18 Q. Yes.
19 A. I'm not sure, because the case I'm aware of I don't
20 know if it was a state constitution. I don't recall.
21 MR. ULLMAN: Okay, I have no more questions
Page 321

22 at this time. But I may reserve the right, we have
23 some other people that are going to ask questions at
24 the end of that to ask some follow-ups, if that's
25 possible.
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uncertified rough draft
1 THE WITNESS: Okay.
2 MR. SHUMAKER: You want to take a quick
3 break?
4 MR. ULLMAN: Yeah, why don't we take a
5 break. Someone else has to sit here.
6 THE VIDEOGRAPHER: Going off the record at
7 2:53 p.m.
8 (A brief recess was taken.)
9 THE VIDEOGRAPHER: We're back on record at
Page 322

10 3:07 p.m.
11 EXAMINATION
12 BY MS. LEVINE:
13 Q. Good afternoon, Mr. Orr, thank you for appearing
14 today. Your deposition is continued, you're still
15 under oath. To save some time I'm not going to repeat
16 some of the instructions we went through at the
17 beginning of the deposition.
18 For the record Sharon Levine, Lowenstein
19 Sandler, for the American Federation of State County
20 and Municipal Employees and with me Michael Artz,
21 in-house counsel of AFSCME.
22 A. Okay. Thank you and I understand.
23 (Discussion held off the record.)
24 Q. Okay, sorry for that.
25 A. Okay.
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uncertified rough draft
1 Q. Mr. Orr, there was some colloquy --
2 MR. SHUMAKER: Mic.
3 Q. There was some colloquy this morning with regard to
4 negotiations or discussions --
5 A. Yes.
6 Q. -- prior to the filing of the bankruptcy case.
7 A. Yes.
8 Q. Are you familiar with concessionary bargaining
9 historically in Detroit?
10 A. Could you -- I have read to some degree about the
11 labor history and concessionary bargaining in Detroit
12 stemming from Walter Reuther on forward even
13 concessionary bargaining going forward from I would
Page 324

14 say Mayor Kilpatrick, Mayor Cockrel and Mayor Bing and
15 in specific the 10 percent wage cuts and other
16 concessions, but if there's something else that you
17 would like to talk about, please explain it.

18 Q. So that's yes?

19 A. Yes.

20 Q. Generally?

21 A. Well, generally but if there's something specific,
22 please, yes.

23 Q. Is it your view that concessionary bargaining can
24 result in concessions with the -- with regard to
25 benefits without a Chapter 9?

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uncertified rough draft

1 MR. SHUMAKER: Objection, calls for legal
Page 325

2 conclusion.

3 A. It was my hope -- and here again, I'm going to say the
4 same statement that I said earlier today, collective
5 bargaining and concessionary bargaining, however you
6 call it, is suspended under Paris, I don't want to
7 waive any rights that the city may have under 436. Do
8 I recognize people certainly aren't in agreement.
9 Um --

10 Q. Let me rephrase the question. I just want to clarify.

11 A. Okay.

12 Q. I was asking for your view. I'm not asking for a
13 legal conclusion we don't have to do the reservation
14 of rights.

15 A. Okay.

16 Q. I'm just asking Mr. Orr as he's sitting here today of
17 his understanding of whether or not it's possible
Page 326

18 without a legal conclusion to arrive at a consensual
19 agreement with or without calling it negotiations,
20 discussions or proposals, with regard to retiree --
21 with regard to benefits without a Chapter 9?

22 A. Is it possible?

23 Q. Yes.

24 A. Yes, anything a possible. I think I've said that.

25 Q. Okay, now, historically in Detroit isn't it a fact

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uncertified rough draft

1 that there were concessionary provisions made with
2 regard to benefits that impacted retirees previously
3 that did not involve Chapter 9?

4 MR. SHUMAKER: Objection, foundation.

5 A. Over what period of time?

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6 Q. Is it your understanding that at any point in time.

7 A. As I said --

8 Q. No no it's a very -- it's a yes or no question. At
9 any point in time prior to the bankruptcy filing have
10 there been concessionary discussions, negotiations,
11 whatever, in Detroit that have resulted in
12 concessionary changes to benefits that impacted
13 retirees?

14 MR. SHUMAKER: Objection, foundation.

15 A. Not within the time frame that I have.

16 Q. So you're not aware of that?

17 A. No, I'm aware there have been concessionary bargaining
18 changes. My testimony is in my view that they
19 appeared to not being able to occur within the time
20 frame I had to work with.

21 Q. I wasn't asking you what you did or didn't do. I was

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22 just asking you if you're aware that there -- whether
23 or not there have been in the history of Detroit
24 concessionary changes to benefits that were
25 implemented that impacted retiree benefits without

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uncertified rough draft

1 there having to be a Chapter 9?

2 MR. SHUMAKER: Same objection.

3 A. Well, the reason I said not within my -- you're asking
4 my view.

5 Q. I'm not asking you?

6 A. Are you now going away from my view?

7 Q. No I'm asking -- this is the question.

8 A. Okay.

9 Q. The question is -- can you read back the question?

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(Record read back as requested.)

11 A. Yes, I am aware that in the history of Detroit there
12 have been concessionary bargains to certain benefits
13 without a Chapter 9.

14 Q. Okay, now, prior to the filing of this Chapter 9 --

15 A. Uh-huh.

16 Q. -- are you aware of any concessionary bargaining
17 changes that affected retirees?

18 A. I'm hesitating because I'm trying to recall the
19 briefing papers I went through and your specific
20 question is retirees. I'm well aware of concessionary
21 bargaining changes for actives, now I'm thinking about
22 retirees. I don't know.

23 Q. Prior to the filing of this Chapter 9 petition you
24 previously discussed what I believe were four

25 meetings, June 10, June 20, July 10 and July 11; is

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1 that correct?

2 A. Yes. I think we were talking about -- there were more
3 meetings than that, but I think we were talking about
4 the four meetings that were referenced on page I
5 believe 55 I believe of my declaration. Well,
6 actually it starts on 54. Okay.

7 Q. What other meetings were there?

8 A. I had had -- meetings with?

9 Q. Meetings -- well, my understanding is that the
10 meetings on June 10, 20, July 10 and July 11 were with
11 employees or retirees. Did you ever other meetings
12 with employees or retirees?

13 A. You mean in a time frame?

Page 331

14 Q. Yes.

15 A. Yes. Those were the formal structured meetings that
16 we recounted. My understanding that there were other
17 meetings that occurred outside after formal process
18 and certainly a number of phone calls.

19 Q. With whom -- who is the counter party to those
20 meetings?

21 A. I'm not sure I can capture every counsel err party to
22 every meeting because my professional team and staff
23 would have various discussions but I tried to recount
24 ones that I'm aware of and who the counter parties
25 were in my declaration.

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uncertified rough draft

1 Q. Was AFSCME one of the counter parties that you met

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2 orrrroughdraft (3).txt
with outside of the four meetings we were previously
3 discussing?
4 A. I didn't meet with them but I understand that there
5 may have been meetings or telephone calls with others.
6 Q. Were there meetings with others?
7 A. I don't know if there were meetings or phone calls.
8 There may have been meetings or phone calls.
9 Q. Were there phone calls?
10 A. I don't know. I understand there may have been.
11 Q. Who would have placed those phone calls on your
12 behalf?
13 A. I don't know if they would have placed or if they
14 would have received them. I'm not sure, but if they
15 would have been it would have been somebody probably
16 on labor benefits team, he have and Miller, Brian
17 easily or others who work with them or others on the

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18 orrrroughdraft (3).txt
city's labor department.
19 Q. If they were substantive meetings with anybody on
20 behalf of AFSCME would that have been reported to you?
21 A. More than likely, yes.
22 Q. Were there any substantive meetings with AFSCME prior
23 to the filing?
24 MR. SHUMAKER: Objection to form.
25 A. I'm going to -- outside of the meetings I mention in

♀

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uncertified rough draft

1 my declaration?
2 Q. Outside of what we'll call the big four.
3 A. Okay, big four. Thank you. Sitting here today none
4 that I recall.
5 Q. Are you familiar with the so-called webster

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6 orrrroughdraft (3).txt
litigation?
7 A. Yes.
8 Q. Okay, that litigation was filed on July 3?
9 A. I believe so.
10 Q. And you sent your request to governor Snyder on July
11 16th?
12 A. Yes.
13 Q. And Governor Snyder authorized the Chapter 9 filing on
14 July 18th?
15 A. Yes.
16 MS. LEVINE: Could we have it marked as Orr
17 16?
18 (Marked Exhibit No. 16.)
19 (Discussion held off the record.)
20 Q. We've just marked a document as Orr 16. It's really
21 it's just a Detroit News report from July 18th or July

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22 orrrroughdraft (3).txt
17th actually at 11:00 p.m. ?
23 MR. SHUMAKER: I'm sorry counsel, I see a
24 July 16 reference at the bottom.
25 MS. LEVINE: Sorry July 16th at 11:00 p.m.
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uncertified rough draft
1 MR. SHUMAKER: Yeah.
2 Q. Mr. Orr, do you recall reading this press coverage at
3 the time that it was -- that it came out?
4 A. I do not recall reading this but I can read it now.
5 Q. The -- is it your understanding that as of the date of
6 this article the governor was not thinking about --
7 actually I'm going to correct myself. It looks like
8 according to the printout at the bottom of the page
9 it's September 13 -- no -- that's when it was printed,

♀

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10 never mind. orrrroughdraft (3).txt
11 was it your -- is it your understanding
12 that as of the time of this press coverage Governor
13 Snyder was not yet recommending a Chapter 9 filing for
14 Michigan?
15 MR. SHUMAKER: Objection, foundation.
16 Q. For Detroit?
17 MR. SHUMAKER: Sorry. Objection,
18 foundation, form.
19 A. I don't think -- I think I was the one recommending
20 and Governor Snyder was either going to approve or
21 disapprove of my request. This is 11:00 p.m. I
22 haven't seen this and it appears to be 11:00 p.m. it
23 says -- so give me your question again.
24 Q. What was your understanding at this point in time of
25 Governor Snyder's view with regard to whether or not

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orrrroughdraft (3).txt

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uncertified rough draft

1 he would recommend -- he would accept your
2 recommendation that Detroit file a Chapter 9 petition?
3 A. It was unclear. I had gotten to the point at least on
4 the 16th of thinking it was time for me to make the
5 recommendation. It was unclear what the response was
6 going to be.
7 Q. Did you discuss the Webster litigation with the
8 governor?
9 A. I don't think so.
10 Q. Did you discuss the Webster litigation with anybody in
11 the governor's office?
12 A. Was the Webster litigation the first lawsuit filed
13 against the governor and the treasurer on the 3rd?

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14 orrrroughdraft (3).txt
And then the next week AFSCME joined that litigation?
15 Was that by the UAW the first litigation and AFSCME
16 joined that list gauges the next week?
17 Q. One was Flowers and one was Webster.
18 A. Right. So I want to make sure we're talking about the
19 right one. So you're talking about Webster.
20 Q. Did you discuss either the Flowers or Webster
21 litigation with the governor?
22 A. No, I didn't discuss it with the governor.
23 Q. Did you discuss either the Webster or Flowers
24 litigation with anybody at the state?
25 A. You mean on the 16th?

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uncertified rough draft

1 Q. No, at any point in time.
2 A. At any time. Let me -- let me -- let me then clarify
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orrrroughdraft (3).txt

3 my answer. I think -- my recollection is that there
4 were lawsuits being filed that we did not discuss at
5 the beginning of July. I think there was a piece of
6 litigation that had been filed the morning of the 16th
7 -- in direct response to your question did I discuss
8 the litigation with the governor? At some point, yes.
9 Q. Do you recall whether you had that discussion with the
10 governor before July 18th?
11 A. Yes, I believe I did.
12 Q. And was it before July 18th?
13 A. Yeah, I believe it was.
14 Q. What did you discuss?
15 A. Well, was it? I think generally, and here I'm going
16 to be very careful, there were discussions I had --
17 I'm not sure I had any discussions with the governor

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18 orrrroughdraft (3).txt
without either my counsel being on the line or counsel
19 on behalf of the state and the governor being on the
20 line so I don't know if that implicates
21 attorney-client.
22 MR. SHUMAKER: It certainly could.
23 THE WITNESS: Okay.
24 A. Without disclosing what was discussed, we had
25 discussions.

uncertified rough draft

1 Q. Okay, so it's your position -- well, let's go back.
2 So on July 3rd, for example, who was your
3 counsel?
4 A. Well, my restructuring counsel was Jones Day, but --
5 Q. And who was the governor's counsel?
6 A. The governor's counsel would be I believe in the
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orrrroughdraft (3).txt

7 governor's office generally heading up that group
8 would be Mike Gadola and Valerie Brader and I think
9 this correct the discussion I had earlier this
10 morning. I may clarify a discussion I had earlier
11 this morning but I -- well direct response to your
12 question those are the people in the governor's
13 office.
14 Q. Okay so if you and the governor were on the phone --
15 A. Right.
16 Q. -- then those conversations -- I'm not asking you
17 about conversations that you had just you and
18 Jones Day, I'm asking you what conversations you had
19 with representatives -- with either the governor or
20 representatives of the state prior to July 18th after
21 the Webster and Flowers litigations were filed on July

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22 3. orrrroughdraft (3).txt
23 A. Okay. I think we did have conversations. I'm not
24 sure they're not protected by attorney-client
25 because --

uncertified rough draft

1 MR. SHUMAKER: If you believe lawyers were
2 on those phone calls.
3 A. I know lawyers were on the phone, I just don't -- I'm
4 not acting as an attorney so I don't know -- I know
5 there were lawyers on the phone. I know my lawyers
6 were on the phone so I don't --
7 MR. ULLMAN: The fact that there were
8 lawyers on the phone doesn't make it a privileged
9 conversation.
10 MS. LEVINE: Well, let him get the
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orrrroughdraft (3).txt

11 statement out and then we'll --
12 A. I believe there was a common interest. Can I consult
13 my attorneys?
14 MR. SHUMAKER: Certainly. You want to take
15 a quick break?
16 THE VIDEOGRAPHER: Going off the record at
17 3:24 p.m.
18 (Discussion held off the record.)
19 THE VIDEOGRAPHER: We're back on the record
20 at 3:31 p.m.
21 Q. Did you reach a --
22 MS. LEVINE: Can you read back my last
23 question?
24 Actually I'll rephrase it.
25 Q. Prior to July 17th did you have conversations with the

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1 governor or anybody in the governor's office?

2 A. Prior to July 17th?

3 Q. But since July 3.

4 MR. SHUMAKER: About?

5 Q. About Flowers and Webster.

6 A. Oh.

7 MR. SHUMAKER: Yes or no?

8 A. Yes.

9 Q. Prior to July 17th but after July 3, did you have any

10 discussions with the governor or anybody in the

11 governor's office about filing a -- filing for Chapter

12 9 for Detroit?

13 A. Between the 3rd and 17th?

14 Q. Yes.

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15 A. Yes.

16 Q. With whom did you have the discussions about the

17 Flowers litigation, the Flowers Webster litigations?

18 A. Attorneys in the governor's office.

19 Q. Which ones?

20 A. I believe Valerie Brader and Mike Gadola.

21 Q. Anybody else?

22 A. I'm trying to recall if in one of my discussions with

23 the governor we discussed that specific litigation or

24 just that there were cases being filed and I don't --

25 I don't recall any specific discussion about that

uncertified rough draft

1 particular piece of litigation, just that there were

2 lawsuits being filed.

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3 Q. So you discussed with Valerie Brader and Mike Gadola

4 the Flowers and the Webster's litigation, you

5 discussed with the governor just the fact that there

6 was the -- the litigations were pending now? And

7 we're still within the July 3 through July 17 time

8 frame.

9 A. I don't know if I ever discussed both cases. I think

10 I discussed one with Brader and/or Gadola.

11 Q. Okay and what did you discuss about the litigation

12 with braid error Gadola?

13 MR. SHUMAKER: Objection I'm going to --

14 the question calls for the witness to reveal

15 privileged attorney-client communications as part of a

16 common interest agreement with the state and therefore

17 I'm going to instruct him not to answer.

18 MS. LEVINE: Okay, we'll reserve our

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19 rights.

20 MR. SHUMAKER: Understood.

21 Q. With regard to the conversations that you had with the

22 governor with regard to July 3 through July 17, with

23 regard to the potential for filing for Chapter 9, do

24 you recall specifically on what days you had those

25 conversations?

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1 A. No.

2 MR. SHUMAKER: Objection to form.

3 THE WITNESS: Oh, okay.

4 MR. SHUMAKER: Counsel, you're saying just

5 between him and the governor? No one else?

6 Q. Did you have conversations that involved the governor

Page 348

7 between July 3 and July 17 with regard to the

8 potential for filing a Chapter 9 for Detroit?

9 MR. SHUMAKER: Where counsel was not a part

10 of the conversation?

11 MS. LEVINE: No, no, I'm just asking if he

12 had conversations. I haven't asked him yet who's

13 participating and it's not privileged even with a

14 joint defense agreement, which we're reserving our

15 rights about for him to tell me that conversations

16 took place, then we will get into who participated and

17 which conversations and then we'll decide whether or

18 not he can talk to me about them.

19 MR. SHUMAKER: Okay, I'm just making sure

20 the witness doesn't reveal anything.

21 THE WITNESS: Okay, and waive anything.

22 MR. SHUMAKER: And waive anything.

23 THE WITNESS: For the record there is no

24 effort to waive anything. But I'm trying to be

25 accurate.

uncertified rough draft

1 Q. Let me try to ask it more succinctly so that we can

2 parse it because I'm going to ask you questions with

3 regard to conversations where you and the governor

4 participated and there were other people present.

5 A. Right.

6 Q. I'm going to ask you questions with regard to you and

7 other people --

8 A. Right.

9 Q. -- in the governor's office?

10 A. Right.

11 Q. And then we'll find out whether or not lawyers were

12 present at some or all of those conversations and then

13 we'll figure out what we do about that.

14 A. Okay, okay.

15 Q. Okay?

16 A. Okay.

17 MR. SHUMAKER: Okay.

18 Q. So let's start with just you and the governor. Did

19 you have conversations with just the governor between

20 July 3 and July 17th with regard to filing Chapter 9

21 for Detroit?

22 A. There's no mystery, I just don't want to run up

23 against a privilege. I believe at one of my -- when

24 was -- this was July 3rd? Oh, this is -- okay. Now

25 it -- I think that both the governor and I were on

uncertified rough draft

1 vacation over the 4th of July weekend so we may not

2 have had and he was on vacation I believe the

3 following week so we probably did not have our weekly

4 meeting. That's why there was a gap. At some point

5 it is possible for us to have had a meeting after --

6 just the governor and I -- and when I say just the

7 governor and I'm including other nonlawyers, his chief

8 of staff, his deputy chief of staff, people along

9 those lines I'm not thinking any of those are

10 attorneys and if they are I'm not waiving any

11 privilege --

12 Q. Okay.

13 A. -- but it's possible we had meetings after that time

14 with just the governor. Okay.

15 Q. What did you discuss?

16 A. Because he's waived the deliver the process privilege.

17 I think we generally discussed the ongoing operational

18 restructuring, the status at a very high level the

19 governor, you know, we don't -- we typically do not

20 discuss how many meetings, who attended, what was

21 said, went back and forth, it was just a very high

22 level of how things were going with the restructuring

23 effort and that the lawsuits, this is just with the

24 governor, were beginning to create the risk that we

25 would lose the initiative and I might be unable to

203

uncertified rough draft

1 discharge my obligations under 436.

2 Q. Did you have any conversations without counsel between

Page 353

3 you and the governor between June 14 and July 3?

4 A. June 14 and July 3?

5 Q. The big four was June 14, June 20, July 10 and July

6 11.

7 A. Without counsel?

8 Q. Uh-huh.

9 A. I may have.

10 Q. Did you discuss the June 14 meeting with the governor?

11 A. Yes, I believe, but that may have been -- between July

12 -- give me the dates again.

13 Q. Well let's make it easier. Anytime after the June 14

14 meeting.

15 A. Yes.

16 Q. -- did you discuss the June 14th with just the

17 governor?

18 A. Well, with just the governor. I typically --

Page 354

19 occasionally I will meet with just the governor but

20 whenever you say just the governor my answer should

21 include those meetings where I have members of his

22 senior staff as well.

23 Q. When you say members of his senior staff, who are you

24 referring to?

25 A. His chief of staff.

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1 Q. What's the name?

2 A. Dennis Muchmore, John Roberts his deputy chief of

3 staff, sometimes my chief of staff, Shani Penn, my

4 senior advisor Sonya Mays, occasionally Treasurer

5 Dillon. Is Andy an attorney?

6 MR. ESSAD: Yes.

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7 THE WITNESS: Yes, he is, so I've got to be

8 careful. So -- huh. I think Andy was sometimes at

9 those meetings so I've got to be careful.

10 Q. Okay so at meetings where there were no counsel

11 between June 14 and July 3, did you have any

12 discussions with regard to the June 14 or the June 20

13 meeting?

14 A. I don't think there were any meetings where there were

15 no counsel between June 14th and July 3.

16 Q. Okay, how many times did you meet between June 14 and

17 July 3 with the governor by in person or by telephone?

18 A. I am not sure.

19 Q. More than once?

20 A. Probably.

21 Q. More than twice?

22 A. Likely.

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23 Q. More than six times?

24 A. I don't think -- I don't think more than that.

25 Q. Okay, so somewhere between two and six and at every

205

uncertified rough draft

1 single one of those meetings you believe counsel was

2 present or on telephone if it was a telephonic

3 meeting?

4 A. Yes sometimes we would do conference calls and there

5 would be counsel present on the phone so I'm being

6 very careful here, yes, there's a possibility there

7 was counsel present at each of those meetings.

8 Q. I'm going to ask a question but your counsel has to

9 speak first. Are you claiming the joint defense for

10 the Flowers and the webster litigation or are you

Page 357

11 claiming joint defense with regard to the thought

12 process leading up to the filing of the Chapter 9?

13 MR. SHUMAKER: Claim --

14 MS. LEVINE: Let me ask the question and

15 then you can assert it but I don't want to be tricky

16 I'm not trying to be tricky.

17 THE WITNESS: Thank you, than you.

18 MS. LEVINE: During those conversations

19 that took place prior to the filing of the Webster and

20 the Flowers litigation from June 14 through July 3,

21 did you have any -- did any of the conversations that

22 you had with the governor in person or by telephone

23 conference involve discussions with regard to the

24 filing of the Chapter 9 petition.

25 A. Between the 14th and the 3rd?

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1 Q. Uh-huh.

2 A. I don't recall any specific discussions but they may

3 have.

4 Q. Did you have conversations with the governor during

5 June about the -- about filing for Chapter 9 at which

6 counsel wasn't present either in person or by

7 telephone? And when I say meetings I'm talking about

8 either in person or by telephone.

9 A. I think I can say this. My weekly Detroit subject

10 meetings typically include the governor, his chief of

11 staff or deputy chief of staff, treasurer Dillon and

12 one of his employees, Tom sacks on, and/or some of our

13 advisors and attorneys. I do not recall a meeting or

14 a phone conference with the governor, it may have

Page 359

15 happened, I'm just recalling it and I'm trying very

16 hard to, I do not recall a meeting or phone conference

17 where for instance treasurer Dillon was not either

18 there or on the phone. And I'm trying to -- in the

19 few times that the governor and I have occasion just

20 one-on-one meetings, I'm trying to recall if we

21 discussed a Chapter 9 filing. I'm now just talking

22 about the governor of one of one meetings. It is

23 possible not in terms of timing, just generally

24 speaking because here again it was not at the grand

25 level.

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uncertified rough draft

1 Q. Just to clarify, I believe that your counsel will

2 allow you to answer whether or not there's been

Page 360

3 orrrroughdraft (3).txt
discussions with regards to a Chapter 9 filing with
4 the governor so long as counsel wasn't on the phone.
5 MR. SHUMAKER: Correct.
6 A. Yes, these are the meetings I'm talking about.
7 Q. Treasurer Dillon is not counsel.
8 A. Well, he's an attorney and I don't know if the
9 privilege attaches.
10 MR. SHUMAKER: If you believe he was acting
11 as an attorney, then I would caution you and instruct
12 you not to answer. If Mr. Dillon was acting as the
13 treasurer and the treasurer alone --
14 THE WITNESS: Right.
15 MR. SHUMAKER: -- as a businessperson, then
16 you can answer.
17 THE WITNESS: Okay. Okay. That -- okay.
18 A. Yes, then that means at some of those meetings we
Page 361

19 orrrroughdraft (3).txt
probably did discuss potential Chapter 9 filing
20 without attorneys but with treasurer Dillon.
21 Q. Prior to July 3 what was the timing that you were
22 discussing with regard to a potential Chapter 9
23 filing?
24 A. We weren't. Generally it was consistent with what I
25 had said at the June 10th and June 14th meetings which
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uncertified rough draft
1 is after June 14th we will use the next 30 days to
2 assess where we are and what progress we're making and
3 if we're making process and I think I said at that
4 June 14th meeting in the nature of a term sheet
5 agreement in principles or concepts moving forward
6 that we might be a position to be able to extend that.
Page 362

7 orrrroughdraft (3).txt
I said that at June 14th assuming a steady state.
8 Q. After July 3 but before July 17 --
9 A. Uh-huh.
10 Q. -- did you have any conversations with the governor or
11 his senior staff at which counsel wasn't present?
12 A. Excluding Treasurer Dillon or --
13 Q. Excluding.
14 A. Acting as -- I don't think he was acting as an
15 attorney, I think he was acting as treasurer.
16 Q. Correct.
17 A. Okay. Yes, I believe so.
18 Q. And did you -- during -- how many of those meetings
19 did you have?
20 A. Here again, we -- the meeting of the week after the
21 4th of July holiday I think we did not have because I
22 went the week before and I think the governor was on
Page 363

23 orrrroughdraft (3).txt
Mackinac the week after so I don't know if we had a
24 meeting then. That would leave you said July 17?
25 Q. July 3 to July 17.
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uncertified rough draft
1 A. Okay so that would leave roughly another week or two.
2 There may have been a meeting the following week and
3 I'm trying to recall if any attorneys were at that
4 meeting. There was probably a meeting the following
5 week or the week thereafter. There may have been
6 attorneys at one of those meetings from the governor's
7 staff.
8 Q. How many meetings did you participate in between July
9 3 and July 17 at which -- with the governor at which
10 attorneys were present as opposed to meetings with the
Page 364

11 orrrroughdraft (3).txt
governor where attorneys were not present?

12 A. I think we only had one or two meetings and attorneys

13 were present at either one or both of those meetings.

14 Excluding Treasurer Dillon. I'm talking about

15 attorney attorneys not lawyers.

16 Q. Who drafted your July 16th letter? Was that you?

17 A. No, I got a draft and I edited it.

18 Q. Who prepared the draft for you?

19 A. I think it was a number of folks. It was -- I

20 forgot --

21 Q. Was it Jones Day?

22 A. It was more than likely Jones Day, yes, restructuring

23 guys.

24 Q. Did you direct the draft be prepared?

25 A. Yes, we --

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orrrroughdraft (3).txt

1 MR. SHUMAKER: You can say. You been

2 testify to that.

3 A. Without discussing exactly what was said, yes, I did.

4 Q. What was the date that you gave Jones Day that

5 direction?

6 A. I think that direction was either to start getting the

7 letter in shape that Friday, I'm not sure, either that

8 preceding week or over the weekend. Yes.

9 Q. But after the commencement -- but that would have been

10 after July 3?

11 A. Yes, yes, it was after July 3.

12 Q. Did you advise the governor that you had started the

13 process of drafting that letter?

14 A. I don't recall --

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15 orrrroughdraft (3).txt
MR. SHUMAKER: If -- if -- if the

16 communications were the governor were with counsel

17 present, then I don't want you to reveal what was

18 said.

19 THE WITNESS: Okay. Okay.

20 MR. SHUMAKER: If at another meeting where

21 there was not counsel present, that's a different

22 story.

23 THE WITNESS: Right.

24 A. Within that time frame, because I believe that was a

25 weekend, I do not recall communications with the

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1 governor or communications with the governor where

2 counsel was not present. There may have been a

3 discussion with the governor -- no, I don't recall an

Page 367

orrrroughdraft (3).txt

4 independent discussion with the governor.

5 Q. In addition to conversations in which you participated

6 in, were there conversations between your consultants

7 and the governor's office and/or his counsel between

8 July 3 and July 17?

9 A. I believe -- well, when you say the governor's office,

10 that includes the treasurer?

11 Q. Yes.

12 A. Yes, I believe so.

13 Q. The state?

14 A. The state, yes, I believe so.

15 Q. How many of those meetings are you aware of where you

16 did not participate?

17 A. I --

18 MR. SHUMAKER: Object to foundation, but --

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19 A. Where any meetings I didn't. There were -- the
20 investment bankers, for instance, will talk with
21 treasury from time to time about a number of matters
22 and I'm sure that I wasn't on all of those
23 conversations. And my legal team might talk with the
24 governor's attorney on various matters and I'm pretty
25 confident I wasn't involved in all those discussions

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uncertified rough draft

1 either. So it's not like it happened every day or it
2 was happening every half hour but I'm sure there were
3 discussions between them that I was either not
4 involved with or aware of.

5 Q. Did any of those discussions between either the
6 investment bankers directly or your counsel and the
7 state governor's office or whomever involve
Page 369

orrroughdraft (3).txt

8 discussions with regard to the filing of the Chapter 9
9 for Detroit and/or the timing of that filing?

10 MR. SHUMAKER: Object to form.

11 A. Yes, they probably did.

12 Q. When you say they probably did, were you getting
13 reports from your investment banker and your counsel
14 with regard to the conversations they were having with
15 the governor and other representatives of the state?

16 A. Not necessarily every -- not necessarily every
17 conversation but generally speaking so I was getting
18 reports but I cannot testify that I was privy to every
19 conversation that everyone either on legal side or the
20 investment side -- banking side or them together had.

21 Q. When did you first start thinking that the timing for
22 the Chapter 9 filing was going to be sooner rather

Page 370

23 than later? orrroughdraft (3).txt

24 A. As opposed to?

25 Q. Let me rephrase. When did you decide that the timing

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uncertified rough draft

1 of the Chapter 9 filing should be July 18th or July
2 19th?

3 A. Well, I didn't. I decided to make the request and my
4 intent was to have the ability to file available and
5 possibly executed as soon as I got it. It was without
6 talking or waiving privileges from my counselor
7 counsel and investment bankers, the concerns about us
8 losing control or being put in a situation because of
9 the ongoing litigation where I would not be able to
10 discharge my duties in an orderly fashion, in a
11 comprehensive matter to put the city on a sustainable
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orrroughdraft (3).txt

12 footing because of the litigation grew throughout June
13 and it was made clear to me that my desire to try to
14 continue to engage in discussions was running the risk
15 of putting my obligations under the statute in peril
16 and I think I was even counseled that I was being
17 irresponsible.

18 Q. When did you first advisor have your consultants first
19 advise the governor or anybody affiliated with the
20 state that you were starting to draft your July 16th
21 request?

22 A. Outside of attorney-client communications.

23 MR. SHUMAKER: No.

24 Q. No, I'm talking about when did you tell the governor.
25 I'm not sure it's you or --

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1 A. But I may have --

2 Q. -- or I'm not sure if it's your counsel who made that

3 request for you or your investment banker who made

4 that request for you --

5 MR. SHUMAKER: Objection.

6 A. When did I transmit the request?

7 Q. Yes.

8 MR. SHUMAKER: Object to the form.

9 Q. Let me rephrase it. When did somebody on behalf of

10 the Emergency Manager advise somebody on behalf of the

11 state that the Emergency Manager and his team was

12 starting to draft the July 16 request?

13 A. Can I answer that if it's to an attorney at the

14 governor?

15 MR. SHUMAKER: When.
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16 THE WITNESS: Oh, when.

17 MR. SHUMAKER: Yeah.

18 A. Oh, that was probably Monday. Monday, the 16th.

19 Q. You testified previously that you were concerned you

20 wouldn't be able to carry out your obligations in an

21 orderly fashion. What do you mean by that?

22 A. The lawsuits that were being filed were requesting, my

23 understanding from reading them what I was informed

24 were requesting injunctions against me with any

25 options I might have available including the Chapter 9

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1 filing and were refocusing our attention on litigation

2 risk. It they were also -- it wasn't just the -- what

3 for lack of a better word what we'll call the Flowers

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4 and related litigations, we were also in -- we had --

5 had defaulted on the cops' payment on June 14th and

6 had announced a settlement with Bank of American

7 Merrill Lynch commensurate with that day. One of the

8 insurers had begun to interfere with that process from

9 June until July so we were getting hit on all sides

10 both on the creditor's side but also on for lack of a

11 better word the labor side with risk and threats and

12 lawsuits and were sued three times in June -- well,

13 sued once, one joined in the suit and sued again I

14 think on the 16th and also the Syncora of threats for

15 which we had to file litigation where I was counseled

16 that given the chaos in a sense that was erupting --

17 MR. SHUMAKER: Hold on right there.

18 THE WITNESS: Okay.

19 MR. SHUMAKER: What you were counseled I
Page 375

20 want to make sure you're not going into an area that's

21 protected by the privilege.

22 THE WITNESS: Okay.

23 Q. You can give me your understanding. You can't tell me

24 what --

25 A. As I said before, my understanding was I was at risk

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uncertified rough draft

1 of losing the ability to try to pursue a restructuring

2 in an orderly fashion.

3 Q. Wasn't the Syncora issue settled sometime in prior to

4 the Chapter 9 filing, though?

5 A. No.

6 Q. The risk that you felt from the webster/Flowers I

7 think what you referred to as three litigations --

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8 A. Uh-huh.

9 Q. -- when did you communicate that risk to the governor

10 or the state or when did somebody communicate that

11 risk on behalf of the Emergency Manager to the

12 governor or the state?

13 MR. SHUMAKER: Objection, foundation, form.

14 A. Probably the preceding week of the 16th or maybe even

15 a week before that. Let me --

16 Q. So when you say the preceding week, just looking at a

17 calendar for a minute, what was the date there?

18 A. Can I look at the calendar on my checkbook without it

19 being classified as an exhibit.

20 Q. No, I won't ask you.

21 A. I just want to make sure I'm not in trouble. Okay I

22 don't want you to see my checkbook. It would make you

23 cry.

24 MR. SHUMAKER: July 8th was a Monday.

25 THE WITNESS: Yeah, I'm --

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1 Q. So was it --

2 A. It was probably the week of July.

3 Q. July 8th? I know I can't see either.

4 A. I -- yeah, it was probably that week, July 8th week.

5 Q. Okay so?

6 A. It may have been -- the reason I'm hesitating as I

7 said before I think my family and I were out that

8 preceding Friday, Saturday and Sunday and we actually

9 ran into the governor's family coming onto the island

10 I believe that Sunday so I don't think we had that

11 meeting that week so it may have actually been the

12 following week.

13 Q. Meaning sometime during the week of July 15th?

14 A. No, or the end of --

15 Q. So it was during?

16 A. The week of the 8th. The 8th. But I did not have a

17 meeting with the governor that week.

18 Q. Well --

19 A. Now that I look at the calendar.

20 Q. Okay.

21 A. Okay.

22 Q. So just to clarify, it appears more likely than not

23 that you did not have a meeting between you and the

24 governor the week of July 8th but your understanding

25 is that during the week of July 8th probably the

uncertified rough draft

1 latter part of that week, somebody on behalf of the

2 Emergency Manager let the governor or the state know

3 that you were drafting or starting to draft the July

4 16th request and that you had concerns about the

5 flower/webster litigations?

6 A. Yeah and here again I don't know if so much concerns

7 -- it wasn't like we were focused on Flowers webster

8 we were saying in the universe of the world that

9 litigation, whatever name, and the Syncora struggle

10 were creating a situation that was untenable and

11 threatening what we had wanted to do.

12 Q. Lamont Satchel.

13 A. Yes.

14 Q. He's your -- what's his title?

15 A. He is the -- I believe labor negotiator for the city.

16 Q. And what's his scope of authority?

17 A. His scope of authority initially as labor negotiator

18 was to oversee, monitor and lead labor relationships

19 with the city and its labor partners.

20 Q. And to whom -- and who is his direct report?

21 A. At this point Lamont's direct report -- well, it is --

22 the org chart is being revised, but his direct report

23 would have been to the chief operating officer.

24 Q. And who was that?

25 A. At that time it would have been Gary Brown.

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1 Q. And who is it today?

2 A. It still goes through Gary Brown but I am intimately

3 involved with the process.

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20 interview to the state back in January, the end of

21 February.

22 A. Yeah, the documents I was shown this morning would

23 make it January.

24 Q. And with whom did Jones Day meet at that time, who

25 physically was in the room?

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1 A. Treasurer Dillon, then CFO Jack Martin, Rich Baird,

2 Chris Andrews, Ken Buckfire and one of his colleagues.

3 Q. Any other outside consultants besides Miller Buckfire?

4 A. Well, Rich Baird is on contract to the state, but I

5 don't -- I think -- I don't recall if Ernst & Young

6 was there. There was a member of the financial

7 advisory board.

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4 Q. And do you know whether or not during the month of

5 June prior and up through -- starting with June 1

6 through July 18th --

7 A. Yes, July 18th.

8 Q. Did Lamont Satchel have any meetings with the labor

9 organizations?

10 A. Do I know? I know that during this time the CBAs,

11 some of the city's collective bargaining agreements

12 were expiring and I believe that Lamont did have

13 meetings during that time not just related with that

14 but with other issues as well.

15 Q. During your prior testimony and I apologize for

16 skipping around but I don't want to duplicate what's

17 already been done.

18 A. That's okay.

19 Q. You spoke about Jones Day doing a presentation or

Page 382

8 Q. Do you recall who that was?

9 A. As soon as you said that it went out of my head.

10 Very, very sharp, as -- Ken -- Ken Whipple was there.

11 I'm just going through the room. Andy, Ken Whipple,

12 Jack Martin, Chris Andrews, Rich Baird, that's all

13 that I recall off the top of my head and Miller

14 Buckfire and one of his colleagues.

15 Q. And who was there from Jones Day?

16 A. Aaron Agenbroad -- they were all partners. Aaron

17 Agenbroad, Bruce Bennett, Heather Lennox, myself,

18 Corinne Ball, Steve Brogan, and I think that was -- I

19 think that was our team.

20 Q. What was Aaron's last name again?

21 A. Agenbroad, A-G-E-N-B-R-O-A-D.

22 Q. What department is he in?

23 A. Aaron Agenbroad is a partner in charge of the

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24 San Francisco office. He is in the labor.

25 Q. He's in the labor group?

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1 A. Uh-huh.

2 Q. Corinne, all the rest of the attorneys on the team

3 were bankruptcy?

4 A. No. Bruce Bennett is in the bankruptcy group.

5 Corinne Ball was in the bankruptcy group. Heather

6 Lennox is in the structured finance and bankruptcy.

7 Steve Brogan is managing partner for the firm.

8 Q. But he was intimately involved in Chrysler; correct?

9 A. Steve Brogan?

10 Q. Yes.

11 A. Steve Brogan oversaw Chrysler representation generally

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12 but he wasn't day-to-day counsel. Actually I think

13 you were. And I'm trying to think who else was there

14 if anybody. There was a pitch book, but that's who I

15 recall.

16 Q. Turning back to Orr 6 for a minute.

17 MR. SHUMAKER: What is that, counsel?

18 which one?

19 A. Is that the letter or the --

20 Q. It's the summary of partnership governor of Michigan

21 mayor of Detroit Emergency Manager.

22 MR. SHUMAKER: Thank you.

23 THE WITNESS: Okay.

24 Q. I'm on the page that ends 464.

25 MR. SHUMAKER: 464? I'm sorry, I'm not --

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uncertified rough draft

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1 MR. ULLMAN:

2 MS. LEVINE: The Bates stamp number 464.

3 A. 464.

4 MR. SHUMAKER: 464 or 7 are you looking at?

5 MS. LEVINE: Oh, sorry.

6 THE WITNESS: 47?

7 MS. LEVINE: Yes, I guess so.

8 THE WITNESS: Yes.

9 Q. Who drafted this document? It says draft date

10 2/21/2013?

11 MR. SHUMAKER: Objection, foundation.

12 A. Yeah, I don't know who drafted this document. I think

13 the email chain shows this was a document that was

14 forwarded to me and I think there's in an email this

15 morning I asked for it to be sent to me in a word

Page 387

16 format. I don't know who drafted it.

17 Q. And did you comment on this document?

18 A. Yes I did.

19 Q. Was it ever reduce today a final form?

20 A. I don't recall seeing a final form but there's nothing

21 signed but this may be the final form if there is such

22 a thing.

23 Q. Paragraph 7 reads?

24 A. Yes.

25 Q. -- labor, retiree and benefit initiatives will be

223

uncertified rough draft

1 pursued jointly by the mayor and the manager to the

2 extent permitted by law.

3 A. Yes.

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4 Q. orrrroughdraft (3).txt
What's your understanding of what that means?

5 A. That was under -- the extent permitted by law was put

6 in there I believe by me. As you see in paragraph 6

7 there's the to the extent permitted by law is a

8 different typeset. And my understanding there was I

9 think this was in the document of emails it talks

10 about it being an aspiration A1 agreement but not

11 requirement and I just wanted to reserve the right of

12 the manager to exercise his duties as permitted by law

13 as he saw fit.

14 Q. What were the -- what was your understanding of what

15 the labor, retiree and benefit initiatives were to be?

16 A. Well, there were some initiatives that were ongoing

17 and at this time there were the reductions, there was

18 an act 312 award that had come up for DPOA I believe

19 and there were ongoing issues regarding the act 312s

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orrrroughdraft (3).txt

20 for the other police divisions but I know there were

21 -- I know there were other initiatives going on but

22 this document at this time was not intended to be a

23 detailed recitation of what those initiatives were.

24 It was generally, as I understood it, to be a -- based

25 off the consent agreement.

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uncertified rough draft

1 Q. Were these to be cost cutting initiatives?

2 A. It wasn't -- here again, this was aspiration A1. It

3 wasn't clear at this time as to what those initiatives

4 were going to be.

5 Q. Were these initiatives going to include cost cutting

6 initiatives?

7 A. They might have included cost cutting initiatives,

Page 390

8 yes. orrrroughdraft (3).txt

9 Q. Was it your understanding or intent in your world as

10 Emergency Manager or at the time EFM?

11 A. At this time?

12 Q. Yes.

13 A. No. This was handed to me, I had -- as I said I think

14 in the prior email chain I was doing my due diligence

15 at this time. I had not made any decision regarding

16 cost cutting initiatives.

17 Q. On -- we had some discussion earlier with regard to

18 some of your thinking just prior to the filing, that

19 first and second or second and third week of July.

20 A. Right.

21 Q. And you raised as one of the concerns, and I

22 understand that there is sagora and a lot of other

23 things going on, but you raised as one of concerns

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orrrroughdraft (3).txt

24 that if certain orders were entered in connection with

25 the Webster/Flowers litigation that you would lose the

uncertified rough draft

225

1 ability to do some of the things that you wanted to do

2 as the Emergency Manager.

3 A. Yes.

4 Q. What were you afraid you were going to lose the

5 ability to do?

6 MR. SHUMAKER: Object to the form. I

7 object to the summary.

8 A. Let me say this. It wasn't just limited to labor

9 issues. I mean we were trying to --

10 Q. No no I understand that. But with regard to the labor

11 issues?

Page 392

12 A. Orrroughdraft (3).txt
Oh labor issues?

13 Q. Yeah.

14 A. We wanted to -- and they would include cost cutting
15 measures perhaps, pensions and benefits, but also
16 streamlining job efficiencies, moving into the CET's,
17 if you're talking about just labor.

18 Q. Narrow and specifically what were you afraid you were
19 going not be able to do if the orders that were being
20 sought were entered or enforced from the Webster and
21 Flowers litigation.

22 A. Yeah, everything. We were concerned that the orders
23 had the possibility of delaying the overall
24 operational financial restructuring that we were
25 pursuing because they're all interrelated and if we

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orrroughdraft (3).txt

1 had the same cash spend for instance on some issues
2 that we did on others, then even the savings we were
3 trying to get in Syncora and others we might not be
4 able to service so we were concerned about everything.
5 It wasn't just one specific issue.

6 MS. LEVINE: Can I have a short break?

7 THE WITNESS: Sure.

8 MR. SHUMAKER: Sure.

9 THE VIDEOGRAPHER: Going off the record at
10 4:12 p.m.

11 (A brief recess was taken.)

12 THE VIDEOGRAPHER: We're back on the record
13 at 4:23 p.m.

14 MS. LEVINE:

15 Q. Mr. Orr, was one of the concerns with regard to the

Page 394

16 Orrroughdraft (3).txt
Flowers and Webster litigation that 436 would be found
17 unconstitutional by the state court?

18 MR. SHUMAKER: Object to the form.

19 A. Not -- not particularly. Frankly, it wasn't more of a
20 concern that ultimately the statute be found
21 unconstitutional, no. It was more of a concern of
22 just being caught up in the uncertainty of litigation
23 and appeals.

24 Q. Then let me put a finer point on it. Were you
25 concerned that if in fact 436 were found

uncertified rough draft 227

1 unconstitutional at the state court level, the lower
2 level court --

3 A. Uh-huh.

4 Q. -- that there would be the delay in the time to run
Page 395

orrroughdraft (3).txt

5 through the appeal process on that issue?

6 A. Yes, that was one of the concerns.

7 Q. Your counsel has asserted a joint defense?

8 A. Yes.

9 MR. SHUMAKER: Common interest.

10 Q. Common interest. Just want to clarify to make sure I
11 understand. We're obviously reserving our rights but
12 I want to understand whether you're claiming common
13 interest with regard to discussions relating to the
14 entire Chapter 9 filing or whether you are claiming
15 common interest just with regard to the state court
16 litigation?

17 MR. SHUMAKER: Well, it would be to both.

18 I mean, the common interest agreement captures what

19 Mr. Orr's been doing since he became Emergency Manager

Page 396

20 orrrroughdraft (3).txt
where there was a common interest between the state
21 and the Emergency Manager's office. So both of those
22 would fall within to the extent that counsel was
23 involved in the communications.

24 MS. LEVINE: Okay.

25 MR. SHUMAKER: If that helps.

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uncertified rough draft

1 MS. LEVINE: Mr. Orr was not a defendant in
2 the Flowers and Webster litigation so I just want to
3 understand what the basis is for claiming joint
4 defense or a common interest agreement between July 3
5 and I think it was July 17 or 18 when the retirement
6 system named Mr. Orr as a party.

7 MR. SHUMAKER: Well, the common interest is
8 there's a common interest between the state and the
Page 397

orrrroughdraft (3).txt

9 Emergency Manager's office to a whole number of things
10 regarding the requests and the provision of legal
11 advice. So if you're talking about any possible
12 communications between Mr. Orr and the governor's
13 office where counsel was present about any of the
14 subjects you name, whether it be the Flowers or the
15 Webster or the Chapter 9 filing, we will assert the
16 privilege. I -- your -- the fact that Mr. Orr was not
17 a defendant in the first two actions doesn't change
18 the assertion of the privilege that we're making.

19 MS. LEVINE: Okay slightly different topic.

20 Q. Are you aware of a coalition among certain of the
21 cities's unions put together in order to try and deal
22 with some of the restructuring issues with regard to
23 labor that you've been focused on?

Page 398

24 A. A coalition? Can you please explain? Informal
25 coalition or the retiree committee or --

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uncertified rough draft

1 Q. Not the retire committee. A coalition of unions with
2 regard to trying to deal with some of the labor issues
3 that you --

4 A. Under the AFSCME umbrella?

5 Q. No no no?

6 A. Or separate union. I'm trying to -- I'm trying to
7 understand.

8 Q. Well, I think your answer indicates to me that perhaps
9 the answer is no.

10 A. Yeah. Okay.

11 MS. LEVINE: I have no further questions.

12 MR. SHUMAKER: Thank you, counsel.
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orrrroughdraft (3).txt

13 THE VIDEOGRAPHER: Going off the record at
14 4:27 p.m.

15 (Discussion held off the record.)

16 THE VIDEOGRAPHER: We are back on the
17 record at 4:29 p.m.

18 EXAMINATION

19 BY MR. DeCHIARA:

20 Q. Good afternoon, Mr. Orr.

21 A. Good afternoon.

22 Q. My name is Peter DeChiara. I'm an attorney with the
23 law firm of Choen Weiss & Simon, LLP. We represent
24 the United Auto workers in this proceeding.

25 Prior to January of 2013 were you

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Page 400

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1 acquainted with the governor, Rick Snyder?

2 A. Personally acquainted? I knew he was governor of

3 Michigan but --

4 Q. Personally acquainted.

5 A. Remotely. We overlapped in law school.

6 Q. Did you maintain since law school did you maintain any

7 friendship or other social connection?

8 A. Hadn't seen him since 1982.

9 Q. Until --

10 A. Until sometime earlier this year in March.

11 Q. Did you have any professional or other dealings with

12 him between the time you were in law school until you

13 saw him in connection with -- until after January

14 2013?

15 A. No, none that I'm aware of.

16 Q. Before you were appointed as Emergency Manager, did

Page 401

17 you have occasion to speak to the governor about what

18 could or should be done about Detroit's pension

19 liabilities?

20 A. Before I was appointed?

21 Q. Yes.

22 A. No, I don't believe the governor and I talked at that

23 level of detail.

24 Q. Okay. Same question for any of the governor's senior

25 staff. Did you speak to any of the governor's senior

231

uncertified rough draft

1 staff before you were appointed as EM regarding what

2 could or should be done about Detroit's pension

3 liabilities?

4 A. No, I don't recall having discussions of that

Page 402

5 specificity.

6 Q. What about with Andrew Dillon? Same question, same

7 time period.

8 A. Right. No, I don't think we talked at that

9 specificity.

10 Q. Same question for Mr. Baird?

11 A. No, no, not with Rich Baird.

12 Q. Before you were appointed EM did you speak with anyone

13 at Jones Day about what could or should be done about

14 Detroit's pension liabilities?

15 A. I'm trying to think back. Before my appointment? Did

16 I speak with anyone about pension liabilities?

17 Q. Anyone at Jones Day, yes.

18 A. Anyone at Jones Day? I may have but I don't recall

19 specifically. I may have. Um I think I probably did,

20 yes, I think I probably did.

Page 403

21 Q. Do you recall who you may have spoken to?

22 A. No. It could have been -- no, I don't recall who I

23 spoke to. It could have been a number of people.

24 Q. Did you speak to Corinne Ball?

25 A. Corinne Ball, it may have been Corinne.

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uncertified rough draft

1 Q. Do you recall any discussions you had with her about

2 that topic?

3 A. I don't.

4 Q. What about the what's the name of the managing

5 partner?

6 A. Steve Brogan?

7 Q. Did you speak to him about that topic?

8 A. No we didn't speak at that level of specificity, no.

Page 404

9 Q. Anyone else in the bankruptcy group that you worked
10 with at Jones Day about that topic?

11 A. About that specific topic?

12 Q. Right, about what could or should be done about?

13 A. Could or should be done.

14 Q. About Detroit's pension liabilities?

15 A. I don't recall having that level of specificity, no.

16 Q. You've testified earlier today about a -- what I'll
17 call a pitch meeting that Jones Day made to the city
18 in order to be considered as counsel for the city. Do
19 you recall that testimony?

20 A. Yes.

21 Q. Okay. Apart from that pitch meeting, prior to
22 Jones Day being retained by the city, do you know
23 whether there were any communications by Jones Day to
24 the city about what could or should be done about
Page 405

25 Detroit's pension liabilities?

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uncertified rough draft

1 A. To the city?

2 Q. Yes.

3 A. None that I'm aware of.

4 Q. What about to the state -- I'm sorry, go ahead.

5 A. Well, I had two meetings with mayor Bing but I don't
6 think we discussed pensions.

7 Q. Do you recall what you did discuss?

8 A. Just generally the state of the city, the difficulties
9 that he had encountered, they were more getting to
10 know each other meetings. There wasn't any plan being
11 worked out or any detailed discussions.

12 Q. Other than the pitch book that you testified about
Page 406

13 earlier, prior to Jones Day being retain by the city,
14 do you know whether Jones Day provided or shared with
15 the city any analysis, memos, reports or any documents
16 of that sort with the city concerning the issue of
17 Detroit's pension liabilities?

18 A. Other than the pitch book?

19 Q. Yes.

20 A. None that I'm aware of.

21 Q. Do you know -- before Jones Day was retained by the
22 city, do you know whether Jones Day spoke to anyone at
23 the state including the governor and his senior staff
24 about what could or should be done about Detroit's
25 pension liabilities?

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uncertified rough draft

1 A. Prior to their retention?

2 Q. Yes.

3 A. I think I need to explain my answer. Between the
4 pitch which occurred I believe now on the end of
5 January until sometime in -- at some point in February
6 I recused myself from the retention, the pitch
7 process, so during the time that I was involved for
8 the few weeks I don't know of anything, I wouldn't
9 know nothing after I recused myself.

10 Q. Okay, when was Jones Day retained by the city? Do you
11 know what date?

12 A. I think they were ultimately selected prior to the
13 time I got there. I remember the -- I think it was
14 the first couple of weeks it went through city
15 council, I stepped out of that process as Emergency
16 Manager, it then went to the mayor, I think or vice

17 versa, he approved and went to counsel, counsel
18 approved it, there were press reports of that time
19 frame, I believe it was approximately March -- mid
20 March.

21 Q. Okay.

22 A. Or was it -- no, no, no. They had been selected in
23 March, but I don't think city council approved it
24 until later. So I think I had been selected and
25 retained, but it had to go to the city council

235

uncertified rough draft

1 certification and approval process for some period of
2 time after that.
3 Q. Okay. And since I had earlier asked you whether you
4 were aware of communications by Jones Day to the state

Page 409

5 concerning what could or should be done about

6 Detroit's pension liabilities --

7 A. Right.

8 Q. -- is the answer to your (sic) question you're not
9 aware of any?

10 A. Other than the pitch book?

11 Q. Yes.

12 A. I'm not aware of any.

13 Q. Okay. Are you aware of any reports or presentations

14 or memos or analysis presented by Jones Day to the

15 state concerning what could or should be done about

16 Detroit's pension liabilities that occurred before you

17 became EM?

18 A. No, I don't recall any.

19 Q. Are you aware of any that have occurred since you've

20 become EM?

Page 410

21 A. Oh, I think, yes. I mean, I think there have been
22 presentations to the state about the city's pension
23 obligations, yes.

24 Q. Made by Jones Day?

25 A. Made by Jones Day and Miller Buckfire and others, yes,

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uncertified rough draft

1 yes.

2 Q. Okay. And what are they? Can you tell me what those
3 are?

4 A. Um.

5 MR. SHUMAKER: Objection, we're going to
6 get into the same area that's covered by the common
7 interest agreement so if you're going to -- and ask
8 him about what he knows from a general level, but if

Page 411

9 it's what was the specific content of the

10 communication, we're going to assert the privilege and

11 I'm going to instruct him not to answer so subject to

12 that admonition you can answer.

13 Q. Okay so without getting into the substance of any

14 documents, can you answer the question?

15 A. Yes. Without waiving any privilege, generally there

16 were discussions about -- and this may have included

17 attorneys and investment advisors as well as attorneys

18 and representatives of the state. Without discussing

19 what was said, generally the pension obligation and

20 healthcare obligation and the city's lack of funding

21 to meet them as discussed, you know, I'll just

22 reference the June 14th presentation as that type of

23 discussion.

24 Q. Were these discussions that occurred prior to the

Page 412

25 issuance of the -- prior to June 14th?

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uncertified rough draft

1 A. Yes, I believe they may have been, yes.

2 Q. Did the state participate in the formulation of the

3 proposal that is the June 14th proposal?

4 A. When you say participate, I want to be careful. You

5 know, it generally may have been discussed at a high

6 level but the state to the best of my knowledge didn't

7 participate in any authorship.

8 Q. Okay I'm not talking about the drafting of the

9 document?

10 A. Yeah yeah.

11 Q. But the formulation of the actual ideas or proposals

12 that are contain in the document.

Page 413

13 A. No.

14 Q. Did the state have input into that?

15 A. No. The -- well let me say it this way without

16 talking about what was said. Generally the -- some of

17 the advisors have been in the city for years if not

18 months and have been reviewing this issue so I'm

19 talking about from the time I was there and what I'm

20 aware of. Generally the process once I became

21 involved was we, meaning my immediate restructuring

22 team, reviewed the issues and prepared proposals and

23 then may have discussed them at a high level with the

24 state but as I said there wasn't authorship in those

25 proposals at the state level to the best of my

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uncertified rough draft

Page 414

1 knowledge.

2 Q. Okay. Let me refer you to the June 14th proposal.

3 which is Exhibit 9 of your deposition.

4 A. Yes.

5 Q. And let me refer you in particular to page 109.

6 A. Original 109?

7 Q. Yeah, not the stamp?

8 A. Not the Bates stamp, yes.

9 Q. Right. There's the third bullet point from the bottom

10 of the page. You can read that. It's a two line

11 bullet point, you can read it, but what I want to

12 focus on is the language that there must be

13 significant cuts in accrued benefit pension amounts

14 for both active and currently retired persons. Do you

15 see that language?

16 A. Yes.

Page 415

17 Q. Okay. And did you believe that what I just read out

18 loud that statement to be true as of June 14th? Did

19 you believe that there had to be -- the cuts that are

20 referred to there?

21 A. Yes, based upon our analysis, yes.

22 Q. And did you believe that at the time that the city

23 filed for bankruptcy?

24 A. Did I believe that at the time the city filed for

25 bankruptcy?

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uncertified rough draft

1 Q. At the time the city filed for bankruptcy.

2 A. Yes.

3 Q. Let me just finish the question for the clarity of the

4 record.

Page 416

5 A. I'm sorry. orrrroughdraft (3).txt
6 Q. At the time the city filed for bankruptcy, was it your
7 view that there had to be significant cuts in accrued
8 vested pension amounts for both active and currently
9 retired persons?
10 A. Yes.
11 Q. And is it still -- still your view today?
12 A. Yes, based upon our analysis, yes.
13 Q. This conclusion that there must be significant cuts in
14 accrued vested pension amounts for both active and
15 currently retired persons, was that assertion or that
16 idea or that notion discussed by you with the governor
17 at any time before June 14th, 2013?
18 A. Outside of meetings with attorneys?
19 MR. SHUMAKER: Outside of meetings or calls
20 with attorneys present.

Page 417

orrrroughdraft (3).txt
21 Q. Yeah I'm not looking to infringe your attorney client
22 privilege.
23 A. I know. I just don't recall all of the meetings. It
24 may have been discussed outside those meetings.
25 Q. Well, do you have a recollection?
240
uncertified rough draft
1 A. I do not have a recollection of specific discussions.
2 Q. Just so I understand your testimony, are you saying it
3 was -- it may have been discussed but you're not sure
4 whether or not it was discussed in meetings that were
5 outside the attorney-client privilege? Is that your
6 testimony?
7 A. Yes. It -- well, to clarify, I think it -- some
8 concept probably was discussed but I'm not sure it was

Page 418

9 orrrroughdraft (3).txt
discussed outside of attorney-client meetings.
10 Q. Okay.
11 A. Attorney-client privilege. I want to be clear.
12 Q. Again, without infringing attorney-client privilege,
13 did the state, and when I say the state, I mean the
14 governor, his senior staff, Mr. Dillon, his staff,
15 ever speak to you or your team asserting that there
16 had to be significant cuts in accrued vested pension
17 amounts?
18 A. I don't recall the state ever as you say asserting
19 that there had to be.
20 Q. At the time you filed for bankruptcy or when the city
21 filed for bankruptcy, was it your intent absent a
22 consensual deal with the relevant stakeholders that
23 accrued vested pension amounts for both active and
24 currently retired persons would be cut?

Page 419

orrrroughdraft (3).txt
25 A. Well, first it was our intent that we reach some sort
241
uncertified rough draft
1 of understanding with stakeholders, that's why we
2 asked for the formation of a retiree committee,
3 because we recognize we needed to have representation
4 on those issues. Secondly what we're asking for and
5 what we proposed in this proposal was the size of the
6 unfunded pension obligation and to have discussions
7 about that amount. We did not want to imposes it,
8 we've said that many times, so in direct response to
9 your question, I don't know what we will do absent
10 consent.
11 Q. Okay I'm not sure you answered my question so let me
12 ask you again.

Page 420

13 A. Uh-huh. orrrroughdraft (3).txt

14 Q. Putting aside -- or assuming that there is no

15 consensual deal that would occur --

16 A. Right.

17 Q. -- was it your intent at the time the city filed for

18 bankruptcy that there would be a nonconsensual

19 significant cuts in accrued vested pension amounts?

20 A. No.

21 Q. That was not your intent?

22 A. No.

23 Q. Did you have -- at the time of the bankruptcy filing,

24 did you have an intention as to what you wanted to

25 happen vis-a-vis the Detroit's pension liabilities,

uncertified rough draft

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1 were you enable to achieve a consensual deal?
Page 421

orrrroughdraft (3).txt

2 A. Did we have an intent as to what was going to happen?

3 Q. Yeah, what did you hope would happen or what did you

4 intend to happen to the pension liabilities in

5 bankruptcy if you were unable to get a deal?

6 A. Yeah, I think you're --

7 MR. SHUMAKER: I'll object, it calls for

8 speculation, but you can --

9 A. Yeah.

10 Q. Let me -- I'm not asking to you speculate I'm asking

11 you what your actual intent was at the time you filed

12 for bankruptcy.

13 A. Our intent was to seek a consensual deal.

14 Q. Did you have -- did you think about the possibility

15 that you might not be able to achieve a consensual

16 deal? Did that cross your mind?

Page 422

17 A. Yes. orrrroughdraft (3).txt

18 Q. Okay. And when that thought crossed your mind that

19 you might not be able to have a consensual deal, did

20 you then have an intent as to what you wanted to have

21 happen with the pension liabilities in bankruptcy?

22 A. No. We were going to cross that bridge when we got to

23 it.

24 Q. Okay, just so I understand your testimony, you filed

25 for bankruptcy -- the city filed for bankruptcy at

uncertified rough draft

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1 your request, you contemplated the possibility that

2 there would be no consensual deal?

3 A. Right.

4 Q. But you had no plan or intention as to what would

5 happen to the pension liabilities if there were no
Page 423

orrrroughdraft (3).txt

6 deal?

7 MR. SHUMAKER: Object to the form. It was

8 at the governor's request but --

9 MR. DeCHIARA: Okay, I accept that

10 modification.

11 Q. But can you answer the question?

12 A. Yes. No, because we've never made a -- well, we've

13 never made a threat that what will happen if we don't

14 reach a consensual deal. We will address that issue

15 if and when it arises.

16 Q. Yeah, just to be clear, I'm not asking you about

17 threats, I'm not suggesting there were any threats.

18 I'm just asking what was your intent, what was going

19 on in your head?

20 A. We don't have an intent in that respect.

Page 424

21 Q. Mr. Orr, I would like to show you a document I'll have
22 marked as Orr Exhibit 17. I apologize, I only have
23 one copy so let me show it to your counsel first. Let
24 me read what it is. It's a document that's on the
25 docket, it's a document 849, it's the City of Detroit,

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uncertified rough draft

1 Michigan's objections and responses to Detroit
2 retirement system's first request for admission
3 directed to the City of Detroit, Michigan.

4 (Marked Exhibit No. 17.)

5 MR. SHUMAKER: Thanks.

6 Okay.

7 THE WITNESS: Okay.

8 Q. First of all, are you familiar with that document,

9 Mr. Orr?
Page 425

orrroughdraft (3).txt

10 MR. SHUMAKER: Take a look at the first
11 page.

12 THE WITNESS: Okay.

13 Q. And I will represent that there's a box that's circled
14 and that's my handwriting from this morning.

15 A. Okay. Okay. Yes.

16 Q. Are you familiar with this document?

17 A. Yes.

18 Q. Did you review it before it was filed by the city?

19 A. Yes, I did.

20 Q. Let me refer you to -- let me just read. I'll read it
21 over your shoulder so we can all read it together.

22 And request for admission 12 says admit the city

23 intends to seek or diminish -- seek to diminish or

24 impair the accrued financial benefits of the

Page 426

25 orrrroughdraft (3).txt
participants in the retirement system through this

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uncertified rough draft

1 Chapter 9 case. The response is admitted. Were you
2 aware of that admission made by the city?

3 A. Yes, I reviewed these before they were filed.

4 Q. Okay. And am I reading this correctly that the city
5 does -- or at least as of the date of this document

6 which looks like it was entered on the docket on

7 September 13th that the city intends to seek or

8 diminish to impair accrued pension benefits of Detroit

9 pensioners?

10 A. Yes, that's admitted.

11 Q. Okay. And so when did -- when did the city first --

12 when did that intent by the city first come into

13 existence? Was it in existence at the time of the
Page 427

orrroughdraft (3).txt

14 bankruptcy filing?

15 A. Well, I think we said in June 14th that we need to

16 adjust pensions, I think we said it in several

17 meetings after that so when you say intent as in the

18 legal conclusion of that document, I think we've said

19 that. I think what we've consistently said, though,

20 we want to do that consensually by a consensual plan.

21 Q. I understand that you've said that, but I'm just

22 trying to nail down, if you will, this intent that's

23 expressed, that's admitted in response to request for

24 admission 12 in Exhibit 17. I'm just trying to nail

25 down when that intent first came into existence. Did

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uncertified rough draft

1 it come into existence at the time of the bankruptcy,

Page 428

2 sometime before the bankruptcy was filed? If you can

3 shed whatever light you can on the timing of when that

4 intent came into existence.

5 A. Other than what I've said, we set said at June 14th we

6 have to adjust the pensions, we asked for a consensual

7 plan so I suppose you can say without getting caught

8 in the legal conclusion of the intent, I suppose you

9 could say that from our proposal to the time of that

10 admissions the intent as you say without drawing a

11 legal conclusion occurred.

12 Q. Okay, so that intent existed at least -- at least at

13 the time of the June 14th proposal; is that a fair

14 characterization of your testimony?

15 A. No, I said sometime between the June 14th testimony

16 till the entry of those admissions. The intent as you

17 say could have occurred upon the execution of that

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18 admission.

19 Q. Okay. And is it -- and you don't know when that

20 intent came into existence?

21 A. No, I think it came frankly if you're using the word

22 intent, I think it came when that admission was

23 supplied.

24 Q. So your testimony -- so your testimony is this intent

25 arose at the time that this answer was drafted or

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uncertified rough draft

1 submitted by the city onto the docket? That's when

2 the city developed the intent?

3 A. I don't know if it was on the docket. What I know is

4 the question says, a legal conclusion, the question

5 asked do you intend to benefit and we admitted it.

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6 And I guess in response to your question when that

7 intent arose, I guess it's at the point of admission.

8 Q. Okay. And so you're saying prior to the city

9 preparing this document, the intent that's referred to

10 in the document did not exist?

11 A. I'm not sure we prepared that document.

12 Q. Well, it's a filing in this case?

13 A. It's a response.

14 Q. By the City of Detroit?

15 A. Right but it's a response to a request for admission.

16 Q. Right.

17 A. Okay.

18 Q. But the relevant part where it says admitted.

19 A. Since you're using intent it sounds like you're using

20 as a legal conclusion, I'm saying that using your word

21 the formal intent occurred at the point of admission.

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22 That's what an admission is.

23 Q. Okay. So -- let me describe my understanding you tell

24 me if you agree with my understanding.

25 A. Uh-huh.

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uncertified rough draft

1 Q. So this is a request for admission that asks whether

2 -- that asks the city whether it admits that the city

3 has a certain intent and the city admitted that;

4 correct?

5 A. Yes, yes, that's correct.

6 Q. Okay -- so okay. So as of the moment that the city

7 made that admission in this document, the city had

8 that intent?

9 A. I think -- I think that's an admission, yes.

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10 Q. Right. So we're in agreement.

11 A. Okay.

12 Q. My question is the intent that's referred to, did it

13 exist at any moment before the city made the

14 admission?

15 A. In my mind, no. I mean, the time of admission is when

16 it admits to the intent.

17 Q. And so in the June 14th proposal when it says there

18 must be significant cuts in accrued vested pension

19 amounts, it was not your intent that there be such

20 cuts absent a consensual deal?

21 A. What I'm saying is your letter -- your request for

22 admissions asks when does the city intend to diminish.

23 The proposal said there must be cuts, but throughout

24 that time we said we wanted a consensual resolution.

25 By using the word intent I'm saying it just as a

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uncertified rough draft

1 matter of practicality the expressed intent is upon

2 that admission.

3 Q. Let me ask you about Article 9, Section 25 (sic) of

4 the Michigan constitution. There was a great deal of

5 colloquy earlier today about that topic. Do you

6 recall that?

7 A. Yes, I do.

8 Q. Okay. Did you have any discussions with the governor

9 or the governor's staff or Mr. Dillon or Mr. Baird at

10 any time about the meaning or import of Article 9,

11 Section 25 of the Michigan constitution?

12 MR. SHUMAKER: Without counsel present?

13 MR. DeCHIARA: Yeah, without invading

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14 attorney-client privilege.

15 Q. Oh, I'm sorry, I'm misspeaking. Section 24.

16 A. I understood, yes, okay.

17 Q. Yes.

18 A. I don't recall any of those discussions without

19 counsel present.

20 Q. Prior to your being appointed as Emergency Manager did

21 you speak to any of your colleagues at Jones Day about

22 Article 9, Section 24 of the Michigan constitution?

23 A. Yes, I believe I did.

24 Q. And with whom did you speak --

25 A. With whom did I speak --

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uncertified rough draft

1 Q. -- about it?

Page 435

2 A. Let me clarify. I don't know if I spoke, I think I

3 saw some research on that article.

4 Q. Okay, and this was research that you saw while you

5 were a partner at Jones Day?

6 A. Yes.

7 Q. And it was research shown to you by your colleagues at

8 Jones -- one or more of your colleagues at Jones Day?

9 A. Yeah, I'm -- I'm not a Michigan law constitutional

10 scholar but I think there are various research papers

11 that were circulated, I don't think anybody came in

12 and said, here, read this, I think I just saw a paper

13 that discussed it.

14 Q. Where did -- did you see it as a result of your own

15 research --

16 A. No.

17 Q. -- or did someone show it to you?

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orrroughdraft (3).txt

18 A. I think somebody else was doing research on it and I
19 think it was either through a distribution or --
20 sometimes distributions come through the office, you
21 don't know who, you know, they just come through
22 interoffice mail and you read the distribution and it
23 may have been a research memo that came through my
24 office, came to my office.
25 Q. Do you have in your mind a particular document?

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uncertified rough draft

1 A. Yes, I do.
2 Q. And was it a hard -- did it land on your desk in hard
3 copy or did it come through your email?
4 A. No, I think it came in hard copy.
5 Q. And do you recall what it said?

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orrroughdraft (3).txt

22 client. I'm being careful because the attorney-client
23 privilege can attach prior to a formal relationship so
24 I'm just being very careful but I think it -- I think
25 it implicates attorney-client privilege. I recall

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uncertified rough draft

1 seeing a memo but I also recall up in the right-hand
2 corner that it had all of the instructions about
3 privilege and work product.
4 Q. Apart from that document did you see any other
5 documents --
6 A. No, no.
7 Q. Okay. Do you recall any conversations you had with
8 any of your collateral east at Jones Day while you
9 were still at Jones Day about the Michigan

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orrroughdraft (3).txt

6 MR. SHUMAKER: To the extent that it's not
7 a privileged memo.
8 THE WITNESS: No, it was marked
9 attorney-client privilege attorney work product so I
10 don't think I can speak to it. That's what I recall
11 about it.

12 MR. SHUMAKER: Certainly if it was a memo
13 involving attorney-client advice, you're not going to
14 -- you're not going to testify about it. I'm going to
15 instruct you not to --

16 THE WITNESS: Right, I think it can be
17 characterized as that, yes.

18 Q. Without going into the substance of the document, was
19 it a document that was prepared for a client of
20 Jones Day? Do you know?

21 A. It may have been prepared in contemplation for a
Page 438

orrroughdraft (3).txt

10 constitution?

11 A. No.

12 Q. Did you attend the June 14, 2013 meeting that's
13 referenced in paragraph 80 of your declaration?

14 A. Yes.

15 Q. And did you speak at that meeting?

16 A. Yes.

17 Q. Did you say anything to the effect that -- did you say
18 anything at the meeting to the effect that this
19 meeting was not a negotiation?

20 A. I don't recall if I said that. I may have, but I
21 don't recall.

22 Q. If there was testimony by others that you did say
23 that, would you be in a position to deny that you said
24 it?

25 A. No, I don't recall that I said it or not.

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uncertified rough draft

1 Q. What about the June 20th meeting? Did you attend
2 that?
3 A. I attended one of those meetings. It may have been
4 the June 20th.
5 Q. Are you saying?
6 A. The following week, yes.
7 Q. When you say one of those meetings, are you sure you
8 attended June 14th?
9 A. No, no, no, when I say one, I mean one of the
10 subsequent. I'm sure I attended June 14th. June 10th
11 was Monday, June 14th was Friday, my public meeting
12 was Monday, June 14th was the all creditors meeting.
13 There was subsequent due diligence meetings the

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14 following week and I recall attending at least one of
15 those that week. That was the those I was referring
16 to.
17 Q. I'm a little confused. Are you sure you attended June
18 14th?
19 A. Yes.
20 Q. Okay. So do you recall whether you attended June
21 20th?
22 A. I think I did, but I don't recall.
23 Q. Okay. What about July 11th?
24 A. I don't recall.
25 Q. Okay. So I already asked you about whether at the

uncertified rough draft

1 June 14th meeting you said anything to the effect of

Page 442

2 that this was not a negotiation. Let me ask you the
3 same question for the June 20th and July 11th. Do you
4 recall at that -- at those meetings saying anything to
5 the effect of this is not a negotiation?
6 A. I may have. As I've said several times today, you
7 know, bargaining negotiations is suspended for five
8 years so I may have said that but I don't recall.
9 Q. And again if there were witnesses who testified they
10 heard you say that at one or more of these meetings,
11 would you be in a position to deny that?
12 A. I don't know if I would deny it or if I would confirm
13 it. I mean, their recollection of what was said could
14 be different than mine than or what they heard.
15 Q. Did you attend a meeting on July 10th with creditors?
16 A. I may have.
17 Q. Same question for July 10th. Do you recall saying

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18 anything to the effect that that meeting was not a
19 negotiation?
20 A. I think I generally when I would go to these meetings
21 say we're having discussions and exchange but I would
22 try if I said this is not a negotiation I would try to
23 make sure that I did not waive the suspension of
24 bargaining under 436 so I may have said that, yes.
25 Q. You may have said what?

uncertified rough draft

1 A. This is not a negotiation, yeah, I may have said that.
2 Q. Okay. Apart from you there were others who attended
3 those meetings on behalf of the city; correct?
4 A. Yes, I believe so.
5 Q. Okay. And some of those individuals spoke?

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6 A. Yes. orrrroughdraft (3).txt

7 Q. Okay. Do you recall whether at any of those meetings

8 that you attended whether any of the other individuals

9 who were there on behalf of the city said words to the

10 effect of this is not a negotiation?

11 A. Do I recall? No.

12 Q. At the June 20th meeting, is it true that the

13 attendees, and by the attendees I mean the people who

14 were not there on behalf of the city but the other

15 people, that in order to be heard they needed to fill

16 out a card and submit the card to someone who was

17 running the meeting? Is that how things worked?

18 A. Where was the June 20th meeting?

19 Q. I don't know.

20 A. I -- I know at my June 10th meeting that we had

21 speakers. I don't recall. I don't recall June 20.

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orrrroughdraft (3).txt

22 Q. Let me clarify. Let's talk about the June 14th

23 meeting, the one you're sure you attended.

24 A. Right.

25 Q. Was there a system in place at that meeting wherefore

uncertified rough draft

1 an attendee to be heard he or she had to write -- fill

2 out a card and submit it?

3 A. Yes, I believe so.

4 Q. Okay, and describe how -- how did that -- what was

5 that process, how did that work?

6 A. That process was arranged by my staff. My

7 understanding is that if people wanted to speak, he

8 they could fill out a card and a question would be

9 asked and members who were on the DS on the panel

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orrrroughdraft (3).txt

10 would answer the question.

11 Q. Who would readout the card?

12 A. Initially it was the -- someone I believe on my staff

13 or some of my consultant's staff but toward the end of

14 the meeting people just started asking questions

15 outright.

16 Q. Did -- that same process of attendees having to fill

17 out a card, did that occur at any of the other

18 meetings and by the other meetings I mean either June

19 20th, July 10th or July 11th?

20 A. I don't recall.

21 Q. It may have.

22 A. It may have but I don't recall.

23 Q. Okay. Have you ever in your career as an attorney

24 attended a negotiation session of any kind?

25 A. Yes.

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orrrroughdraft (3).txt

uncertified rough draft

1 Q. Have you ever been at a negotiation session where one

2 side or the other has to fill out a card and have it

3 read by someone else to be heard?

4 A. You're using the phrase negotiation session and I want

5 to be clear that what we were saying is make sure that

6 we did not waive any rights under 436. I have been at

7 meetings wherefore purposes of to engage in oral

8 discussion yes you've had to fill out cards to be

9 heard, yes. I have been at auctions, yes I have been

10 at meetings like that.

11 Q. At auctions?

12 A. Yeah I have Ben at auctions been at meetings been at

13 negotiations, yes, many different types of meetings.

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14 Q. What kind of negotiations where those that
15 participants had to fill out a card to be heard?
16 A. They could have been negotiations for finance, they
17 could have been negotiations for procedures, they
18 could have been negotiations for a number of different
19 subjects, but it's happened on more than one occasion.
20 Q. Have you ever attended a collective bargaining
21 negotiation?
22 A. Yeah, I think I have.
23 Q. Okay. Did you ever see that type of system used in a
24 collective bargaining negotiation?
25 A. I don't think I saw it at the one I attended but

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uncertified rough draft

1 collective bargaining is suspended.

2 Q. Did you -- before any of these meetings -- and by
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orrroughdraft (3).txt

3 these meetings, I mean the June 14th, June 20th, July
4 10th or July 11th meetings -- did you consult with the
5 governor or any other state official about how the
6 meetings would be conducted?
7 A. No, not to the best of my knowledge.
8 Q. Did you consult with anyone, the governor or anyone,
9 any state official, regarding what the purpose or
10 nature of the meetings would be?
11 A. When you say consult, you know, I've testified earlier
12 today that we had regular communications with the
13 governor's office, but my understanding was that how
14 we ran meetings was substantially left up to me and my
15 team, so no we didn't consult in that regard on how
16 the meetings were run.
17 Q. Okay, just to clarify what I mean by consult. I mean

Page 450

18 did you talk?
19 A. Not at that level of detail how we're going to run, no
20 we didn't talk, no.
21 Q. Let me mark a document which I'll mark as -- ask the
22 court reporter to mark as Exhibit 18.
23 (Marked Exhibit No. 18.)
24 Q. Have you -- have you ever seen this document before?
25 A. Yes.

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uncertified rough draft

1 Q. And let me just identify it for the record. It's a
2 letter from Jones Day to Larry Stewart dated June 27,
3 2013?

4 A. I'm --

5 MR. SHUMAKER: We have a different letter I
6 think.

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orrroughdraft (3).txt

7 A. I have John Cunningham.
8 MR. SHUMAKER: We have John Cunningham.
9 MR. DeCHIARA: I'm sorry, let's use that
10 one.
11 THE WITNESS: Okay.
12 MR. DeCHIARA: Thank you.
13 Q. Orr Exhibit 18 will be a Jones Day letter to John
14 Cunningham dated June 27, 2013. Let me ask you, have
15 you seen this Orr Exhibit 18 before?
16 A. Yes.
17 Q. And the first sentence of the letter says thank you
18 for participating in the June 20th, 2013 informational
19 meetings pertaining to the City of Detroit's and then
20 it continues.
21 A. Uh-huh.

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22 Q. orrrroughdraft (3).txt
And you can read the rest.

23 A. Yes.

24 Q. But I won't read it aloud.

25 Do you concur with the description in the
uncertified rough draft

1 sentence that I read of the June 20th meeting as an
2 informational meeting?

3 A. Yes.

4 Q. Let me refer you back to your June 14th, 2013
5 proposal.

6 A. Yes.

7 Q. And to page -- the original page 109. And the third
8 to the last bullet point which we read earlier and
9 again I'm going to focus on the bottom line of that
10 bullet point that says "There must be significant cuts
Page 453

orrrroughdraft (3).txt

11 in accrued vested pension amounts for both active and
12 currently retired persons."

13 At the time of the meetings that I've been
14 referring to, the June 14th, June 20th, July 10th and
15 July 11th meetings, were -- would you have been
16 willing had there been negotiations that took place to
17 compromise and accept -- accept an outcome of the
18 restructuring effort that resulted in there not being
19 cuts in accrued vested pension amounts for both active
20 and currently retired persons?

21 A. Well, that's a hypothetical question that could depend
22 upon a number of things. I don't know. I would have
23 to see the proposal. We were willing to listen to any
24 proposal or counter that came in.

25 Q. Okay, and I'm not trying to phrase it as a

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orrrroughdraft (3).txt
uncertified rough draft

1 hypothetical, I want to focus on what was in your mind
2 at the time of these meetings. So let me ask you.
3 Did you ever consider at the time of these meetings
4 whether you would accept in some scenario that
5 resulted from negotiations that there would be an
6 outcome to the restructuring where there would not be
7 cuts to accrued vested pension amounts?

8 A. That depends upon the proposal and the circumstances
9 of that proposed outcome.

10 Q. I think we're maybe misunderstanding each other. I'm
11 not asking you what you would have done --

12 A. Uh-huh.

13 Q. -- had you gotten a certain proposal or what you would
14 have done under some circumstances that did not occur.
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orrrroughdraft (3).txt

15 what I'm asking you is as to what your actual state of
16 mind was at the time of these meetings. In your
17 actual state of mind --

18 A. Uh-huh.

19 Q. -- did you have -- did you consider and did you think
20 about that had there been certain negotiations that
21 led down a certain path, did you in your mind consider
22 that you might accept an outcome of the restructuring
23 where there would not be cuts to accrued vested
24 pension amounts?

25 A. I was receptive as we said to anything but that would

uncertified rough draft

1 depend upon the proposal.

2 Q. Did you say at any of these meetings that you would be
Page 456

3 receptive to anything?

4 A. No, I think we did say that, yes.

5 Q. So you would have been receptive to an outcome where

6 there would be no cuts in accrued vested pension

7 amounts?

8 A. That depends upon what the proposal was. We were

9 receptive to hearing anything which we haven't heard

10 so yes.

11 Q. And is that true today? Are you willing to consider

12 an outcome to this restructuring effort where there

13 would be no cuts to accrued vested pension amounts?

14 A. That depends upon the terms of the proposal. That's

15 -- that's -- we'll listen to -- we have said before

16 and we'll say again we'll listen to anything but it

17 depends upon the terms.

18 Q. Okay.

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19 A. Your question's a hypothetical so I -- I don't -- it

20 depends upon what the terms are.

21 Q. Okay well we have a disagreement with whether my

22 question is a hypothetical but it is what it is.

23 A. Okay.

24 Q. I can only ask you to answer it to the best of your

25 ability.

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uncertified rough draft

1 A. That's the best of my ability.

2 Q. Let me now ask you about what you actually said at the

3 June 14th meeting.

4 A. Okay.

5 Q. Do you have a recollection of any words you used to

6 communicate to those in attendance that you were open

Page 458

7 to consider anything, if that's a fair

8 characterization of your prior testimony? Did you use

9 words to that effect and if so what were those words?

10 A. I don't remember the exact words but I think we

11 expressed the sentiment that this is a proposal and

12 we're open to discussions.

13 Q. Well, that's a little different. I mean to be open to

14 discussion. I'm not asking you -- I think you

15 testified a few minutes ago that you were open to

16 anything and if I'm mischaracterizing that, correct

17 me.

18 A. Well, no, anything -- and I meant anything meaning

19 anything in terms of discussions, that's why we styled

20 this, we never called this a plan, we never called

21 this a deal, we always called it a proposal because we

22 were open for discussions, any response, meaning

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23 anything, so I think they're the same thing. I'm not

24 trying to be cute in any fashion I'm just saying we

25 were open to responses, yes.

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uncertified rough draft

1 Q. Did you ever say to the attendees at the meetings or

2 communicate to the attendees in writing that the city

3 would consider an outcome to the restructuring effort

4 whereby there would be no cuts to accrued vested

5 pension amounts?

6 A. Did we ever communicate? I'm not sure that anyone on

7 my team did. To the best of my knowledge, I don't

8 recall doing that.

9 Q. Okay. Did you ever -- you or your team ever

10 communicate at the meetings or in writing to the

Page 460

11 creditors that you would be open to a result of the

12 restructuring effort that would result in something

13 less than significant cuts in accrued vested pension

14 amounts?

15 A. Let me -- this line of questioning, let me respond

16 this way. I think it's fair to say that we

17 communicated that we were open to discussions and

18 suggestions and counsel err proposals. Depending upon

19 what the term of those discussions, suggestions and

20 counterproposals or anything were, we were willing to

21 discuss them.

22 Q. Let me turn your attention back to page 109 of the --

23 of Exhibit 9, which is the June 14th proposal for

24 creditors.

25 A. Yes.

1 Q. And I believe you were questioned about this earlier

2 so I'll keep this short, but the fifth bullet point

3 from the bottom of the page makes reference to an

4 underfunding of 3.5 billion dollars.

5 A. Yes.

6 Q. Do you see that?

7 A. Yes.

8 Q. And is it that assessment of -- is it that assessment

9 that that's the level of underfunding that caused you

10 to conclude two bullet points down that there had to

11 be significant cuts in accrued pension benefits?

12 MR. SHUMAKER: Object to form.

13 Q. I mean accrued pension liability?

14 MR. SHUMAKER: Object to the form.

15 A. Yes, we believe there are insufficient funds, yes.

16 Q. Okay.

17 Q. And the pension systems themselves believed, and

18 continue to believe, that the amount of underfunding

19 is less than 3.5 billion; correct?

20 A. Yes.

21 MR. SHUMAKER: Objection, foundation.

22 A. I believe they recognize they're underfunding but

23 there have been statements that it's less than 3.5

24 billion.

25 Q. Statements by them?

1 A. By them.

2 Q. Okay. Did you ever speak to the governor or his staff

3 or any state officials about what was the -- or what

4 is the correct amount of underfunding?

5 A. Yes, I believe so.

6 Q. Who did you speak to about that?

7 A. Putting aside any discussions with attorneys as we've

8 done.

9 MR. SHUMAKER: Same admonition as before.

10 THE WITNESS: Same admonition.

11 A. I believe I may have spoke with -- me personally may

12 have spoken with the treasurer.

13 Q. When was that?

14 A. I don't recall.

15 Q. Was it before or after June 14th?

16 A. Probably before.

17 Q. And was it a face-to-face meeting?

18 A. It may have been. It may have been.

19 Q. Where was the meeting?

20 A. I -- I -- there were so many meetings with so many

21 different parties, not just with the treasurer, but it

22 may have been here in Detroit. We sometimes meet in

23 Detroit.

24 Q. Do you recall the substance of your conversation?

25 A. I do not.

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uncertified rough draft

1 Q. Did he say to you that he believed the pension funds's

2 assessment of the amount of underfunding was

3 unrealistic or words to that effect?

4 A. No, not that I recall. I think -- no.

5 Q. Did you say that to him?

6 A. I think I said something along the lines we believe

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7 it's 3.5, some of the pension funds have asserted it's

8 different, we need to have a dialogue to derive a

9 number.

10 Q. So you were the one who brought up the --

11 A. Yes.

12 Q. -- topic?

13 A. Yes.

14 Q. And what caused you to believe that the pension funds

15 were underestimating the amount of liability?

16 A. As has been discussed both in the presentation and

17 many other times, we looked at a number of factors.

18 First from Gabriel Rotor, then from Milliman's initial

19 analysis of the Gabriel Rotor report, then from

20 Milliman's independent report and the unfunded actual

21 liability, the expected rate of return on assets, the

22 proposed amortization rate, how much we have to pay

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23 out over time --

24 THE COURT REPORTER: I'm sorry. Start

25 again. The expected rate of assets.

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uncertified rough draft

1 A. The expected rate of return, the market value of

2 assets, the proposed amortization rate and other

3 factors, which led us to conclude that they were

4 underfunded at this level to meet the anticipated

5 actuarial liabilities in out years.

6 Q. So you were advised by certain experts who were

7 consulting you --

8 A. Yes.

9 Q. -- about this matter?

10 A. Yes. As was testified to this morning, I'm not an

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11 actuary, I relied on my team, yes.

12 Q. But what initially caused you to look into this issue?

13 Did someone come to you and say -- suggest that the

14 pension liabilities underfunded or is this something

15 that you yourself decided to seek out an opinion from

16 experts on?

17 A. I -- I think that this issue had been discussed prior

18 to my becoming Emergency Manager in various forms with

19 financial stability agreement, perhaps even in a

20 consent agreement. When we're looking at all

21 obligations of the city, I seem to recall those

22 documents started out at \$12 billion of total debt,

23 then a subsequent one having to do before I got here

24 in 2012 came up with \$14 billion of debt, and then the

25 first 30 days that I was appointed one of the

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1 obligations under 436 is get a true assessment of the
2 city's financial condition, we did a deeper dive and
3 that's when we derived these numbers. So that was
4 based upon historical calculations and my obligations
5 under the statute.

6 MR. DeCHIARA: I would like to go off the
7 record just for a minute. I may be done, I just want
8 to consult with co-counsel.

9 MR. SHUMAKER: Sure.

10 THE VIDEOGRAPHER: Going off the record at
11 5:26 p.m.

12 (A brief recess was taken.)

13 THE VIDEOGRAPHER: We're back on the record
14 at 5:39 p.m.

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15

16 BY MR. ULLMAN:

17 Q. Mr. Orr?

18 A. Yes.

19 Q. Just a few more questions for you.

20 A. Sure, Mr. Ullman.

21 Q. You are the -- let me withdraw that.

22 The June 14th proposal that we've look at

23 was put forward by you in your capacity as Emergency

24 Manager?

25 A. Yes.

2

uncertified rough draft

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1 Q. Does anyone besides you have authority to change or

2 modify the terms of the proposal?

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3 A. well, it's my proposal and under statute I have
4 substantial discretion but ultimately I report to the
5 governor, but as far as this, no one else in the city
6 does, no.

7 Q. No one other than you?

8 A. No one other than me.

9 Q. Now, in connection with a Chapter 9 proceeding that's
10 ongoing, in the event that you are unable to reach a
11 consensual resolution, do you intend to withdraw the
12 bankruptcy filing?

13 MR. SHUMAKER: Objection, calls for
14 speculation.

15 A. Yeah, I don't know what we'll do at that point.

16 Suffice it to say, if we can't reach a consensual
17 resolution there are serious questions about the city
18 for a number of reasons.

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19 Q. And if the creditors and objectors do not agree to the
20 terms that are set out in the June 14th proposal, do
21 you intend to put forward a plan in the Chapter 9
22 proceeding that treats pension contributions for
23 retirees differently than the way those contributions
24 are treated in the June 14th proposal?

25 MR. SHUMAKER: Same objection the.

2

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1 A. Yeah, I don't know what we intend to do. Suffice it
2 to say I think the proposal speaks for itself and
3 we'll stand by that. We're hoping to get some
4 movement on it.

5 Q. So as things now stand there's no plan to put forward
6 anything else if the creditors and in particular the

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7 orrrroughdraft (3).txt
retirees do not agree to what's set out in the June
8 14th proposal?
9 A. As it stands right now we don't have a plan.
10 MR. ULLMAN: I have nothing further. Thank
11 you, Mr. Orr.
12 MR. SHUMAKER: Thank you, counsel.
13 THE WITNESS: Thank you.
14 THE VIDEOGRAPHER: Going off the record at
15 5:41 p.m.
16 (Discussion held off the record.)
17 THE VIDEOGRAPHER: We're back on the record
18 at 5:43 p.m.
19 EXAMINATION
20 BY MS. GREEN:
21 Q. Hi, Mr. Orr. We've met before.
22 A. Yes.

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23 Q. My name is Jennifer Green, I represent the two
24 retirement systems for the City of Detroit.
25 A. Yes, Jennifer -- Ms. Green. Good to see you again.
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uncertified rough draft
1 Q. Thank you. Nice to you see you too.
2 I have a question about Exhibit 11. I
3 don't know if you have it in front of you or not.
4 A. Okay.
5 MR. SHUMAKER: Which one is that?
6 MS. GREEN: It's the July 18th letter from
7 the governor.
8 MR. SHUMAKER: Thank you.
9 A. Okay. It's in here. Here it is, got it. Okay.
10 Q. Do you happen to know who within the governor's office

Page 474

orrrroughdraft (3).txt
11 drafted this letter?
12 A. No, I do not.
13 Q. Do you know if Jones Day had any input in drafting the
14 July 18th letter?
15 A. To the best of my knowledge I don't think they did.
16 Q. Do you know if they had any input or saw a preview of
17 the letter before it was delivered on the 18th?
18 A. To the best of my knowledge they did not. I know I
19 did not.
20 Q. Did you have any specific conversations with the
21 governor about this letter between July 16th and July
22 18th?
23 MR. SHUMAKER: Without counsel present?
24 MS. GREEN: With the caveat without counsel
25 present.

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1 A. Without counsel present? No.
2 Q. Did you have any with counsel present?
3 A. Yes, I believe on the morning of the 18th.
4 Q. Okay. You testified earlier that you were exam
5 pecking a letter on the 18th and you really didn't
6 know what to expect until you actually receive the
7 letter?
8 A. I was expecting a letter at any time after I received
9 it I and my staff, Mr. Nalling, Ms. Penn, would spend
10 the 17th and the morning of the 18th for that matter
11 wondering if the letter was going to be forthcoming.
12 I didn't know when I was going to receive the letter.
13 Q. And did you know what the contents of the letter would
14 be with respect to any contingencies?

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15 A. No. orrrroughdraft (3).txt
16 Q. were contingencies anything that were discussed during
17 the meeting with the governor between the 16th and the
18 18th?
19 MR. SHUMAKER: Again only without counsel
20 present. If there were any such discussions.
21 A. No, there were none, not without counsel.
22 Q. without disclosing the substance of what the
23 attorney-client privilege communications would be, can
24 you at least confirm whether contingencies in general
25 were discussed with the governor prior to this letter

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uncertified rough draft

1 being delivered to you on the 18th?
2 A. No, they were not.
3 Q. I notice that the 18th letter says that it was
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orrrroughdraft (3).txt

4 delivered via hand and electronic delivery.
5 A. Yes.
6 Q. what time did you get the letter on the 18th?
7 A. I don't know, but I think it was around lunchtime.
8 Q. Did you receive it via email or did you receive it via
9 hand-delivery?
10 A. I don't recall depending upon which office. I think
11 someone came in and handed it to me. I think someone
12 on my staff gave it to me.
13 Q. Do you recall receiving it via email?
14 A. I think I probably did receive it, I just think
15 somebody got it before I got into my emails and
16 brought it into me.
17 Q. Do you know if the email that this letter was attached
18 to has been produced to date?

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19 A. I do not. orrrroughdraft (3).txt
20 Q. would you be willing to produce the email that
21 attached this letter as part of this?
22 MR. SHUMAKER: Certainly willing to look
23 into it, sure. And it may well very.
24 MS. GREEN: Have already been.
25 MR. SHUMAKER: Been produced.

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uncertified rough draft

1 Q. Earlier we were discussing the common interest
2 agreement between the city and the state. Do you have
3 an actual written common interest agreement?
4 A. That's handled by my counsel. I -- I believe we do.
5 Q. Do you know if you reviewed the common interest
6 agreement?
7 A. I don't recall if I reviewed it.
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8 Q. were you the one that would have executed it on behalf
9 of the city?
10 A. I might have been.
11 Q. Do you know if you've produced the common interest
12 agreement as part of this litigation?
13 A. I don't know.
14 Q. would you produce the common interest agreement?
15 MR. SHUMAKER: Look into that one too.
16 MS. GREEN: Thank you.
17 Q. We earlier were discussing some email correspondence
18 from January of 2013 and you had commented in an email
19 -- you characterized PA 436 as a "clear end-around the
20 prior initiative that was rejected by the voters' in
21 November."
22 A. Yes.

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orrroughdraft (3).txt

23 Q. What did you mean when you said that it was a "clear

24 end-around."

25 A. I had read that in one of the articles and as I said

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1 during that discussion that was my cursory review of

2 the statute and I had read that somewhere, that was

3 the conclusion during that day of going back and forth

4 based upon what I had read at that time.

5 Q. So someone else had concluded that it was a clear

6 end-around and you were agreeing with that

7 characterization?

8 A. I was -- I was parroting in a sense what I had heard

9 and I was expressing the belief that I felt that

10 that's what was said, so yes, at that time that's what

11 I was saying.

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orrroughdraft (3).txt

12 Q. Who else had said that it was a clear end-around?

13 A. I forget which article that was in. It could have

14 been a Free Press article or news article. I was

15 reading or it could have been a WDIV or Fox 2

16 commentary. I was -- I was trying to find out what

17 was going on because of -- this subject came up of me

18 possibly being a candidate for the Emergency Manager.

19 Q. Are you now trying to say that you did not agree with

20 that characterization?

21 A. No, at that time.

22 MR. SHUMAKER: Object to the form. Go

23 ahead.

24 A. What I'm saying is at that time that was my

25 characterization.

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orrroughdraft (3).txt

1 Q. Have you similarly expressed any reservations about PA

2 436 also being a clear end-around of Article 9,

3 Section 24 of the Michigan constitution?

4 A. No, at that time I hadn't even -- I hadn't even

5 thought about the Michigan constitutional questions at

6 that time.

7 Q. Have you since expressed any similar reservations?

8 A. No, I have not.

9 Q. Earlier you were handed Exhibit 17 I believe it was,

10 which was a copy of the city's request for admissions.

11 A. Yes.

12 Q. I'm sorry, the city's responses to the retirement

13 systems request for admissions.

14 A. Yes.

15 Q. Do you have a copy in front of you?

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16 MR. SHUMAKER: He has the only copyright

17 now.

18 MS. GREEN: I have a few extras because

19 they were --

20 THE COURT REPORTER: He took it back. He

21 took the original back.

22 MR. DeCHIARA: Oh I have it? I have it.

23 MS. GREEN: He's got it. We're fine.

24 MR. SHUMAKER: Was it marked?

25 MS. GREEN: It was marked.

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1 MR. SHUMAKER: It was marked. You need it

2 for the record.

3 THE WITNESS: Okay.

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4 MR. SHUMAKER: Peter you want to take this
5 one?
6 MR. DeCHIARA: Thanks.
7 Q. A few moments ago you stated and I don't want to
8 mischaracterize your testimony, I believe you said if
9 you can't reach a consensual deal, there are "Serious
10 questions about the city for a number of reasons."
11 A. Yes.
12 Q. What did you mean when you said that?
13 A. Oh I meant what do we do? We have a lot of liability
14 on pension and OPEB, we simply don't have the money,
15 we can't go to the capital markets and borrow that
16 magnitude of money, we'd have to try to figure out
17 what to do next. That's all I meant.
18 Q. Okay. I would like to direct your attention to
19 request for admission number five, it's on page 10 of
Page 485

20 Exhibit 17. The request to admit asked the city to
21 admit that the restructuring proposal propose to
22 impair or diminish accrued financial benefits of the
23 participants of the retirement systems and the city
24 stated it admits that the restructuring proposal
25 contemplates a reduction in accrued financial benefits
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uncertified rough draft
1 to participants of the Retirement Systems but seeks
2 agreement and acceptance by plan beneficiaries. The
3 city's intention are to gain consensus with its
4 creditors and propose a confirm believe plan. Did I
5 read that correctly?
6 A. Yes.
7 Q. And similarly with respect to number 6, the request
Page 486

8 was for the sit toy admit that the bankruptcy
9 recommendation proposes among other things to diminish
10 or impair accrued financial benefits of the
11 participants in the retirement systems. And the
12 response is the same; correct?
13 A. Yes.
14 Q. Number 12 asks the city to admit that you intend to
15 seek to diminish or impair the accrued financial
16 benefits of the participants in the retirement systems
17 through the Chapter 9 case?
18 A. Yes.
19 Q. And you see that distinction between the three
20 questions?
21 A. Yes.
22 Q. Your response to number 5 and number 6 both state that
23 the city seeks a consensual agreement correct?
Page 487

24 A. Yes.
25 Q. Your response to number 12, which is whether you would
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uncertified rough draft
1 seek to diminish or impair through the Chapter 9 case,
2 does not have the caveat regarding a consensual deal
3 being reached; correct?
4 A. Yes.
5 Q. Why is there that difference? Is it because the city
6 intends to use the cram down provisions of the
7 bankruptcy code to force a nonconsensual deal?
8 MR. SHUMAKER: Object to the form.
9 A. Without getting into discussions with counsel, I think
10 I can -- I think I can safely say without any waiver
11 that the city intends to preserve all of its rights in
Page 488

12 answer number 12.

13 Q. A few moments ago when asked about what the city's

14 plan was if a consensual agreement could not be

15 reached, I believe your response was the city

16 currently has no plan if a consensual agreement is not

17 reached; correct?

18 A. That is correct, yes.

19 Q. Sitting here today is it your testimony the city has

20 no backup plan if a consensual deal is not reached?

21 MR. SHUMAKER: Object to the form.

22 A. Sitting here today it's my testimony that we have no

23 plan other -- first we have no plan, but we have no

24 plan or no effort other than to try to reach a

25 consensual resolution.

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1 Q. If you don't get that consensual resolution, would you

2 resort to the cram down provisions that are contained

3 within the bankruptcy code?

4 A. I don't know. We'll have to as I've said before we'll

5 have to cross that bridge when we get to it.

6 Q. So the city has no present intent to resort to any

7 cram down provisions?

8 A. We haven't formulated a plan based upon consensus or

9 not yet.

10 Q. Maybe you haven't formulated a plan but have you

11 discussed the option?

12 A. Oh, we've discussed a lot of options. That's why I

13 say we want to reserve all rights.

14 Q. Let's get into the discussions. When was your first

15 discussion regarding using the cram down provisions if

Page 490

16 a nonconsensual agreement was not reached?

17 MR. SHUMAKER: Objection. I want to

18 caution the witness about getting into any

19 attorney-client communications. Subject to not

20 revealing anything along those lines, you can answer.

21 A. Without getting into any communications, I'm not sure

22 there was a specific discussion about the cram down

23 provision.

24 Q. A moment ago I thought you said, and I'm quoting from

25 right in front of me, we discussed a lot of options

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1 that's why I want to say we reserve all rights and you

2 had mentioned that there was an analysis about cram

3 down provision so there either was or there was not.

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4 A. I'm not -- what I'm trying to -- my testimony is I'm

5 not sure what we specifically discussed if we can't

6 get a consensual resolution we go to cram down. There

7 were other options that were discussed.

8 Q. Okay.

9 A. Including that. I don't want to give you a binary I

10 response.

11 Q. So I have two follow-up questions then.

12 A. Uh-huh.

13 Q. Number one, whether was the cram down issue discussed?

14 A. I don't recall a -- we -- without discussing what was

15 said with counsel, I don't recall --

16 MR. SHUMAKER: The question is when.

17 THE WITNESS: When?

18 A. We haven't -- I don't want to be unclear. There

19 hasn't been a specific cram down discussion, but cram

Page 492

20 down is one of the options has been mentioned. We
21 have not sought to make a determination of if and when
22 we would pursue that alternative.
23 Q. Well I don't suppose you're willing to offer any sort
24 of assurance today that the city would not resort to
25 the cram down provisions if a consensual deal was not

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uncertified rough draft

1 struck?

2 A. I just said we want to preserve all options. I can't
3 do that.

4 Q. And is it also true that you cannot remember the first
5 time that that option was discussed?

6 A. AH--

7 Q. Let's put it this way much was it liar to the filing

Page 493

8 of July 18th or was it something you discussed after
9 the filing?
10 A. I mean, the reason I'm hesitant is I'm a bankruptcy
11 practitioner, I'm certainly aware of nonconsensual
12 creditors being subject to cram down, I'm just not
13 recalling a specific discussion. I'm not sure we had
14 to have a discussion.

15 Q. Okay.

16 A. Okay, I mean.

17 Q. What other options were discussed? You said you
18 discussed multiple options?

19 A. Well, without getting into negotiations, options
20 regarding which if any classes you could get, which
21 participants, other alternatives, anything short of
22 consensual, what else you might be able to offer,
23 whether you would listen to different factors that go

Page 494

24 into the pay out, whether the beneficiaries would come
25 with a different proposal. A number of things were

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uncertified rough draft

1 discussed.

2 Q. Who did you discuss those options with?

3 A. Our counsel and investment bankers.

4 Q. Have you ever discussed -- so internally you discussed
5 those options?

6 A. Yes, yes, yes, yes.

7 Q. Have you discussed those options with the retirement
8 systems?

9 A. Have I personally discussed those with the retirement
10 systems? I don't recall. I don't think so.

11 Q. Have you discussed those options with any of the

Page 495

12 actual individuals within the Retirement Systems?

13 A. I may have.

14 Q. And who would that be?

15 A. I don't remember. There are so -- I've had over -- I
16 think at this point I've had over 200 meetings, some
17 of those including individual members of the various
18 groups and that may have come up.

19 Q. So you've said several times throughout today and in
20 your response toss our discovery that the city's
21 intent and the city's hope I think you used the word
22 hope would be to get a consensual agreement.

23 A. Yes.

24 Q. And I think I recall you saying that your reading of
25 Article 9, Section 24 is that it would permit

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1 consensual contractual negotiations?

2 A. I believe that's a fair characterization.

3 Q. If that cannot be achieved, would you agree that

4 Article 9, 24, Section 24, would prohibit any other

5 impairment or diminution of the pension benefits?

6 A. No.

7 MR. SHUMAKER: Objection, calls for

8 speculation and for a legal conclusion.

9 Q. And why would you disagree with that?

10 A. For all the reasons we discussed earlier today and in

11 addition I think it calls for a legal conclusion as

12 far as what the import of 436 versus that provision

13 is.

14 Q. Let's talk a little bit about the Chapter 9 process

15 itself.

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16 A. Yes.

17 Q. You seek authorization from the governor, step one?

18 A. Yes.

19 Q. Step two, the governor gives his authorization?

20 A. Yes.

21 Q. And then the city, you acting on behalf of the city,

22 are responsible for filing the Chapter 9 case itself;

23 correct?

24 A. Yes.

25 Q. And after you file the case you and your attorneys are

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uncertified rough draft

1 responsible for the day-to-day activities in carrying

2 out that Chapter 9 case; correct?

3 A. Yes.

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4 Q. And in a Chapter 9 case only the municipality itself

5 can propose a plan of adjust many; correct?

6 A. Correct.

7 Q. So ultimately it will be the city that proposes a plan

8 of adjustment?

9 A. I believe so.

10 Q. And ultimately it will be the city that places in

11 front of the court a method to deal with its pension

12 debt?

13 A. I believe so.

14 Q. And it is only the Court after the city has first

15 proposed the plan, it is the court that can confirm

16 that plan?

17 A. Yes.

18 Q. But all the steps leading up to that confirmation are

19 acts taken by the city; correct?

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20 A. I believe that's the Chapter 9 scheme.

21 Q. You mentioned earlier that in the June time frame

22 there were certain pieces of litigation that were all

23 coming to a head; correct? I'm referring to the

24 Syncora litigation and the Michigan State court

25 litigation.

1 A. Yeah, but I think we were talking about July when the

2 state court litigation began.

3 Q. That's true. The state court litigation was not until

4 July, you mentioned in your testimony that you were

5 throughout the month of June there were concerns about

6 "Losing control."

7 A. June through I think the testimony was at various time

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8 orrrroughdraft (3).txt
frames, June 14th through July 3rd and June 1 through
9 July 18th and I was saying those time frames there are
10 a number of different issues. In the June time frame
11 I seem to remember it as in the prior deposition you
12 attended, we reached an agreement in principal, then
13 things started to go off the rails with Syncora the
14 following Monday on June 17th so that's what my
15 discussion was.
16 Q. And so consistent with that you said you agreed there
17 were concerns that throughout June things were
18 beginning to spin out of control and I think you used
19 the words losing control?
20 A. Yes, in June we were dealing with a number of
21 different issues but we were trying to manage them as
22 best we could and then for the better part of
23 June/July we started being hit with a number of pieces

Page 501

24 orrrroughdraft (3).txt
of litigation that just kept coming over the transom
25 and it appeared that we were starting to lose the
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uncertified rough draft
1 initiative.
2 Q. Okay. You mentioned earlier when you were
3 characterizing the losing control phase of what was
4 going on --
5 A. Uh-huh.
6 Q. -- you said that someone counseled you that it was
7 irresponsible to be delaying the bankruptcy filing?
8 MR. SHUMAKER: Object to the form.
9 A. Uh-huh.
10 Q. Who was it that accused you of being irresponsible for
11 holding off on the bankruptcy filing?

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12 A. well, I wouldn't characterize it as accusation.
13 Q. who counseled you that it was irresponsible?
14 A. It was --
15 MR. SHUMAKER: To the extent that it was
16 counsel, I don't want you to get into the
17 communication.
18 A. Okay, it was a privileged communication.
19 Q. So an attorney at Jones Day?
20 A. No, not necessarily. It -- various discussions with a
21 number of my team members including attorneys,
22 investment bankers and consultants.
23 Q. So during that time frame what was the event that
24 finally pushed you to actually start preparing the
25 documents to file the bankruptcy petition?

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orrrroughdraft (3).txt
1 A. I don't know if there was an event that pushed me, but
2 I think there was a general consensus that if things
3 continued with a number of different lawsuits going on
4 simultaneously, our own litigation against Syncora,
5 that things were spiralling out of control.
6 Q. And I'm assume that during that time frame it was you
7 that directed Jones Day to begin preparing the actual
8 documents that would eventually be filed in the
9 bankruptcy court; correct?
10 A. Yes.
11 Q. Do you know when you told them to go ahead and start
12 preparing the paperwork?
13 MR. SHUMAKER: Objection, asked and
14 answered, but you can answer again.
15 A. I'm not sure the exact date but it was probably

Page 504

16 orrrroughdraft (3).txt
sometime in that July time frame. Yeah.

17 Q. And I'm sure we don't just throw documents like that
18 together. Do you know how long they worked on the
19 documents before they were filed?

20 MR. SHUMAKER: Object to the form.

21 A. No, but I suspect it was at least several weeks.

22 Q. Do you recall when the first draft of the petition or
23 the accompanying documents was provided to you for
24 your review?

25 A. No. But I suspect it may have been -- I don't recall.

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uncertified rough draft

1 Q. Do you recall reviewing multiple drafts, for instance?

2 A. Oh I think I saw several drafts, yeah.

3 Q. If the governor had included a contingency on his July

4 18th letter --
Page 505

orrrroughdraft (3).txt

5 A. Uh-huh.

6 Q. -- would you have had to rework the petition and the
7 corresponding papers?

8 MR. SHUMAKER: Objection, calls for
9 speculation.

10 A. That -- that depends upon what the contingency was.

11 Q. If there was, for example, some sort of contingency
12 regarding the pensions, did you have a separate
13 version of the documents --

14 A. Oh.

15 Q. -- in case there have a contingency placed by the
16 governor?

17 A. I don't -- I don't recall if it would have required a
18 separate version or if it would have required any
19 editing if any at that point.

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20 Q. well, you testified that you got his -- the governor's
21 approval letter somewhere around lunchtime.

22 A. Right.

23 Q. The petition was filed just a few hours later.

24 A. Right.

25 Q. So I'm assuming that the papers were ready to go

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uncertified rough draft

1 because it was just a few hours of turnaround time;
2 correct?

3 MR. SHUMAKER: Objection to form.

4 A. Well, that's your assumption but the reality is you

5 can commence a bankruptcy as you know by filing a

6 petition without other documents so if the contingency

7 you're talking about depending upon what it is there

8 may have been other things we would have had to factor
Page 507

orrrroughdraft (3).txt

9 too and edit, I just don't know.

10 Q. You were asked earlier about an email from Corinne

11 Ball?

12 A. Yes.

13 Q. Where she mentioned the Bloomberg foundation?

14 A. Yes.

15 Q. Did the Bloomberg foundation ever end up providing any
16 funds with regard to either your salary or the

17 Emergency Manager -- the Emergency Manager --

18 A. Effort.

19 Q. -- project if you will?

20 A. No, in fact.

21 MR. SHUMAKER: Object to form.

22 A. In fact I think the memo that followed on that memo

23 said no, I don't want to do that.

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24 Q. Do you know if any other private party has provided
25 funding in addition to your salary which has already
uncertified rough draft 292
been made public, do you know if there were any other
private parties that provided funding in addition to
that?
4 A. Not to me.
5 Q. I would like to give you Exhibit Number 19.
(Marked Exhibit No. 19.)
7 Q. This is city's interrogatory responses.
8 A. Yes.
9 Q. -- to the retirement systems' discovery requests.
10 A. Yes.
11 Q. After page 12 there's a verification by you.
12 A. Yes.
Page 509

orrroughdraft (3).txt
13 Q. Is that your signature?
14 A. Yes, should be.
15 Q. On page 10.
16 A. Yes.
17 Q. On page 10 there's an interrogatory regarding private
18 funds as defined in section 93 F of PA 436.
19 A. Right.
20 MR. SHUMAKER: You're referring to number
21 6, counsel.
22 MS. GREEN: Yes.
23 Q. At this time are you aware of any private funds as
24 defined in PA 436 that have been used to supplement
25 your salary or compensation?
uncertified rough draft 293
Page 510

orrroughdraft (3).txt
1 A. Subject to the answer, there are no private funds.
2 All I get is the compensation that's provided to me
3 pursuant to my contract and in fact I have not been
4 seeking any benefits under that contract such as
5 commuting expense, healthcare, malpractice insurance,
6 directors and officers insurance, in fact I've been
7 subsidize go my efforts out of my own pocket.
8 MS. GREEN: If that situation changes and
9 private funds are provided, I would request a standing
10 request for supplementation to be made aware if that
11 happens.
12 MR. SHUMAKER: I'm sure --
13 MS. GREEN: I'm directing that to your
14 counsel. You don't have to personally let me know.
15 MR. SHUMAKER: We'll look into that if that
16 would happen.
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orrroughdraft (3).txt
17 MS. GREEN: I appreciate that.
18 A. I have not asked and there is no intent or expectation
19 in that regard.
20 Q. The -- I have one last question. We talked about the
21 draft of the petition being prepared by Jones Day.
22 There were media reports that the city was planning to
23 file on Friday, July 19th. Do you recall seeing
24 those?
25 A. Yes.
uncertified rough draft 294
1 Q. What was it that made the city that prompt the sit toy
2 file them instead on July 18th at 4:06 p.m.?
3 A. Counsel just because they're media reports doesn't
4 mean that that was accurate.
Page 512

5 Q. Was there ever a plan to file them on the 19th?

6 Setting aside what the media reported, was there a

7 plan to file them on the 19th?

8 A. No, my plan was to have the permission, the authority,

9 to file them and make that call at some point after I

10 transmitted my letter of July 16.

11 Q. Were any of your conversations on the 18th or the 17th

12 relating to the timing of the petition?

13 A. Outside of communications with counsel?

14 MR. SHUMAKER: I'm going to object to the

15 form just I'm not following your question, counselor.

16 Q. Were any of the conversations that you had on the 17th

17 or the 18th with for instance the governor we've

18 talked about these conversations, were any of those

19 conversations relating to the timing of the filing

20 itself?

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21 MR. SHUMAKER: Again to the extent that

22 you're going to go into the content of the

23 conversations where counsel was present between

24 Mr. Orr and the governor, I'm going to instruct him

25 not to answer.

295

uncertified rough draft

1 Q. Were there any conversations that you had without

2 counsel present?

3 A. No.

4 Q. And are you not willing to answer even what topics in

5 broad categories of topics that were discussed?

6 MR. SHUMAKER: Again to the extent that

7 they reveal what the communications are, I'm going to

8 instruct him not to answer.

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9 Q. Do you know if anyone else from your team had

10 conversations outside of conversations with counsel,

11 relating to the timing of the filing?

12 A. There may have been conversations. I'm not aware of

13 any specific ones.

14 MS. GREEN: I don't have any further

15 questions. Do you have follow-up?

16 MR. SHUMAKER: Thank you, counsel.

17 THE VIDEOGRAPHER: This concludes the

18 deposition and we're going off the record at 6:12 p.m.

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